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# Petroleum Underground Storage Tank Release Compensation Board

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## MINUTES OF THE 157th MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD February 11, 2015

### BOARD MEMBERS IN ATTENDANCE

Jim Rocco  
Don Bryant  
Scott Fleming  
Steve Hightower  
Cheryl Hilvert  
John Hull  
Tom Stephenson

### EX-OFFICIO MEMBERS IN ATTENDANCE

Bill Hills, representing Director Andre Porter, Ohio Department of Commerce  
Chris Geyer, representing Director Craig Butler, Ohio Environmental Protection Agency  
Tyler Brown, 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
Homayoun Sharifi	Environmental Claims Analyst, PUSTRCB
Cindy Knight	Accounts Receivable Analyst, PUSTRCB
Britanya Poe	Office Assistant, PUSTRCB
Carla Dowling-Fitzpatrick	Assistant Attorney General
Brent McPherson	Cardno ATC
Doug Darrah	Cardno ATC
Frank Reed	Frost Brown Todd LLC
Bill Behrendt	OPMCA
Ryan Sabol	Speedway LLC
Will Latt	Speedway LLC

Minutes submitted by:

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Jonathan Maneval  
Administrative Coordinator

**Call to Order:**

Chairman Rocco convened the one hundred fifty-seventh meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, February 11, 2015.

The following members were in attendance: Jim Rocco; Don Bryant; Scott Fleming; Steve Hightower; Cheryl Hilvert; John Hull; Tom Stephenson; Bill Hills, representing Director Andre Porter, Ohio Department of Commerce; Chris Geyer, representing Director Craig Butler, Ohio Environmental Protection Agency; and Tyler Brown, representing Josh Mandel, State Treasurer of Ohio.

**Minutes:**

Chairman Rocco asked if there were any comments or questions regarding the minutes from the January 14, 2015 Board meeting, and there were none. Mr. Hightower moved to approve the minutes. Mr. Geyer seconded. A vote was taken and the following members voted in the affirmative: Ms. Hilvert and Messrs. Brown, Bryant, Fleming, Geyer, Hills, Stephenson and Rocco. Vice-Chairman Hull abstained. 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 said two intermittent employees have been hired to assist with preparing responses to public records requests and scanning BUSTR files.

Mr. Hills reported that 30 of the 110 petroleum release sites being researched by vendors through the second responsible party search program have been completed. This program is used to identify underground storage tank (UST) owners and operators that are responsible for the investigation and cleanup of petroleum releases from USTs.

Mr. Hills stated that the Department of Commerce all-employee meeting previously scheduled to be held at the end of February has been postponed and potentially cancelled altogether.

Mr. Hills said that a certified UST installer course is currently being held at the State Fire Marshal Academy. He said this is a five-day installer training program instructed by Jason Anthony and Steve Parsons, which includes guest speaker presentations. He noted that the majority of the class consists of local fire department personnel.

Mr. Hills said that a certified inspector course will be offered in March, and pointed out that completion of the installer course is a prerequisite for taking the inspector course. Chairman Rocco asked how often the course is offered. Mr. Hills responded stating the course is offered two to three times a year dependent upon demand.

Mr. Hills reported for the week ending January 31, 2015, there were 59 new inspections performed for a total of 4,572 inspections for the three-year inspection cycle ending June 30, 2016. He said that 16 NFAs (no further actions) were generated during this same time period for a total of 190 for the grant cycle ending September 30, 2015.

Mr. Hills stated that, as of February 2, 2015, there were 21,800 registered USTs, and 3,692 owners of 7,414 registered facilities.

### **Financial Report:**

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

#### ***Biennial Budget Update***

Mr. Leasor said that Governor Kasich released the fiscal years 2016/2017 biennium budget proposal, and noted that the budget request submitted by the Board was not fully funded. He said as a result, the Board's Executive Director, Starr Richmond, would likely need to appear before the Controlling Board in the fall to request additional funding.

Chairman Rocco asked Ms. Richmond to provide additional clarification regarding the Governor's executive budget proposal. Ms. Richmond explained that a request for personnel costs was submitted to the Office of Budget and Management (OBM) that included funding to maintain the Board's current staffing level, add a fifth claims analyst position and provide for a merit-based pay increase to the staff averaging 3.5%. She said the OBM analyst that reviewed the request approved the addition of a claims analyst position, but did not allow funding for merit increases. She said an inadvertent miscalculation by the analyst resulted in insufficient funding for the fifth claims analyst position, and an additional \$30,000 – \$40,000 would be necessary in order to fill the position.

Ms. Richmond stated that she would provide testimony before the House of Representatives Finance Subcommittee and also to a subcommittee of the Senate. She said once the budget bill is approved by both houses and signed into law, she will likely need to appear before the Controlling Board to have additional funding appropriated. She said at that time she expects monies to fully fund the fifth claims analyst position to be appropriated, and she will again request monies for merit-based pay increases. She noted that it has been about four years since the staff has received any kind of pay increase.

#### ***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 as of February 10, 2015, the unobligated account balance is \$24.3 million. He said this amount includes \$16.3 million in STAR Ohio and the custodial account, and the \$8 million invested in US treasuries and US agency callable bonds. He said the obligated account balance for the payment of claims is approximately \$4.1 million.

Mr. Leasor said the claims expense for December was just over \$1 million, and to date, approximately \$4.9 million had been paid for claims for fiscal year 2015.

Mr. Leasor reported that, as of December 31, 2014, 97.1% 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 said that during the month of December an unrealized loss of \$17,450 on the investments in US treasuries and US agency callable bonds was recorded. He explained that there

will be unrealized gains and losses as the market value of investments fluctuates. He said if the investments are held to maturity as intended, the Board will receive the par value of the investments upon maturity.

Mr. Leasor said the operating expenses for December were \$126,000. He pointed out that as of December 31, 2014, temporary services expenses were 67% of the amount budgeted. He said this was due to the use of a temporary service employee to fill an Environmental Claims Analyst I position, which is now filled by permanent personnel; and to hire a temporary employee for the purpose of pulling inactive account files to be sent offsite for storage.

Mr. Leasor said as of December 31, 2014, postage expense was 73.5% of the amount budgeted. He said this was due to postage fees for the final quarter of fiscal year 2014 being paid in August of fiscal year 2015. He said these charges include fees for the annual fee statement mailing, which is sent by certified mail.

Mr. Leasor pointed out that as of December 31, 2014, office supplies were below the amount budgeted. He said he anticipates this amount will increase following the purchase of new chairs for the board room, which will be expensed under office supplies. He noted that printing and copy expenses were also below the amount budgeted. He said he expects this will also increase following the printing of the newsletter and the annual fee statements.

Mr. Leasor stated the amount collected by the Attorney General's Office of Collections Enforcement and Special Counsel was significantly lower in comparison to previous years, and therefore the costs for the collection of delinquent accounts were also lower as they are directly related to the amount collected. He said, as a result, the legal and professional expenses were below the amount budgeted. He said an examination will be performed to identify what has caused the amount collected to decrease.

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

Mr. Hightower questioned why the salary expenses were fluctuating on a monthly basis, and why the legal and professional expenses increased drastically in the month of November. Mr. Leasor said the salary expenses are directly related to the actual number of paid working days in any given month, and the legal and professional expenses increased as a result of cyclical billing associated with legal services provided by the Assistant Attorney General and for auditing services provided by the accounting firm Kennedy Cottrell Richards that were paid in the month of November.

Mr. Hightower noted that the Board had previously authorized a contract for work to be performed by the Board's previous accounting firm (Schneider Downs) with an objective of evaluating corrective action costs being submitted during the claims process. He asked whether the expenses for this contract were reflected in the reports. Chairman Rocco responded stating the project had been placed on hold, and therefore, no expenses have been incurred.

Chairman Rocco asked if there were any further questions or comments regarding the finance reports, and there were none.

**Compliance and Fee Assessment Report:**

Chairman Rocco called on Madelin Esquivel, Assistant Director, to present the compliance and fee assessment report.

Ms. Esquivel stated there were no significant changes to the report since the January Board meeting and that she would highlight just a few figures within the report. She said as of January 31, 2015, refunds totaling \$90,349 have been paid to 93 owners this program year, which began July 1, 2014. She said a total of \$17,675 was used to offset prior years' outstanding fees. She said the combined amounts represent 48% of the \$225,000 refund goal set for the current 2014 program year.

Ms. Esquivel said as of January 31, 2015, a net total of \$61,789 had been collected by the Attorney General's Office and Special Counsel.

Ms. Esquivel said as of January 31, 2015, 115 accounts totaling \$169,540 have been certified to the Attorney General's Office for collection. She said she anticipates \$921,000 will be certified for collection within the next few weeks, for a total of approximately \$1.1 million being certified for program year 2014.

Ms. Esquivel said six Orders Pursuant to Law were under appeal and are under review. She said that three Determinations to Deny a Certificate of Coverage are under appeal. She said two appeals are under review and one hearing is scheduled.

Ms. Esquivel said that five Ability to Pay Applications are pending review. The Ability to Pay program allows former UST owners experiencing financial difficulty to apply for and receive a determination of their ability to pay delinquent fees.

Ms. Esquivel stated that as of January 31, 2015, Certificates of Coverage have been issued to 3,081 owners. She said there are 164 Applications for Certificates of Coverage currently in process.

Ms. Esquivel said there are 44 uncashed refund checks, totaling \$44,432. She said that information needed to process refunds has been requested from seven owners for pending refunds totaling \$6,150.

**Claims Report:**

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

Ms. Duann said as of February 2, 2015, there were 1,654 open claims pending review, and a total of 18 claim settlement determinations were under appeal.

Ms. Duann said that on average, claims are being reviewed and settled within one year; with the exception of the claims submitted by major oil companies related to subrogation litigation. She noted that sequence claims are often reviewed in bundles, which increases the efficiency of the claims process.

Ms. Duann reported that 49 claim applications were received in January, and 86 claims were settled during the month. In addition, the staff closed 21 below-deductible claims for which a determination of no further action had been issued for the release more than one year ago.

She said the claim settlement offers thus far for the program year totaled \$4.57 million, with an average claim payment of \$9,300 per claim, and a claim payout ratio of just under 76% of the net value. She said the claim payout ratio is identical to the previous year, but the average payment per claim is about 14% higher in comparison to the previous year. She said she anticipates a total claim settlement offer of approximately \$7.8 million for the program year.

Ms. Duann said that in January, five eligibility applications were received and during that same month, 10 eligibility determinations were issued, of which four were denied for late filing or compliance related issues. She said as of February 2, 2015, there were 15 eligibility applications under review and four eligibility applications under appeal.

Ms. Duann reported that during the last seven months, 83 requests for cost pre-approval had been received, and 92 cost pre-approval notifications were issued. She reported that 35 cost pre-approval requests were pending review as of February 2, 2015. She said that overall, the number of cost pre-approval requests has decreased.

#### **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 the lists behind Tab 6 are listings of facilities that, since the January Board meeting, the owner had been issued or denied a program year 2014 Certificate of Coverage.

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 identified, 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 2014 program year Certificates of Coverage for the 41 owners of 66 facilities included on the list behind Tab 6.

Vice-Chairman Hull moved to ratify the issuance of the 2014 Certificates of Coverage for the facilities listed. Mr. Hightower seconded. A vote was taken and all of the members were in favor. The motion passed.

Ms. Richmond requested the Board ratify her actions with respect to the denial of the 2014 program year Certificates of Coverage for the facilities included on the list behind the Tab 6 green divider page.

Mr. Geyer moved to ratify the denial of the 2014 Certificates of Coverage that were listed. Mr. Hightower seconded. A vote was taken and all of the members were in favor. The motion passed.

**Executive Session:**

Chairman Rocco requested a motion to enter into executive session with counsel pursuant to R.C. 121.22(G)(3) to discuss matters of pending or imminent court action. Vice-Chairman Hull so moved. Ms. Hilvert seconded. Chairman Rocco called for a roll call. The following members voted in the affirmative: Ms. Hilvert and Messrs. Bryant, Fleming, Hightower, Hull, Stephenson, Hills, Geyer, Brown 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. After a discussion with legal counsel, Mr. Fleming also recused himself 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.

Vice-Chairman Hull moved to authorize the Petroleum Underground Storage Tank Release Compensation Board to prepare and proceed with the filing of a complaint in the matter currently pending against Valero Inc. Mr. Bryant seconded. A vote was taken and all of the members were in favor.

Mr. Hightower raised a point of order, and questioned whether the Chairman and Mr. Fleming were disqualified from participating in the vote, considering their recusal from the executive session. After some discussion with the Board's Assistant Attorney General, Carla Dowling-Fitzpatrick, Chairman Rocco responded stating that the Attorney General's Office has advised that former and current employees of major oil companies should not participate in executive session discussions concerning the subrogation litigation. He said his understanding was that recusal from executive session did not disqualify them from voting on a motion to take legal action against a company for which they have no current or former employment relationship and for which no conflict of interest exists. Mr. Hills pointed out that if the Chairman and Mr. Fleming had recused themselves from the vote, the motion still passed.

**Confirm Public Hearing and Next Meeting and Adjourn:**

Chairman Rocco said there will be a public hearing on Wednesday, March 11, 2015, at 10:00 a.m. for the purpose of soliciting comments on the proposed amendments to rules 3737-1-04.1, 3737-1-07 and 3737-1-19 to update the cross-references to rule 3737-1-04. The next Board meeting will commence immediately following the public hearing.

The Finance Committee will be meeting at 9:00 a.m. prior to the Board meeting.

Mr. Hightower made a motion to adjourn the meeting and Mr. Fleming seconded. All were in favor.