



Petroleum Underground Storage Tank Release Compensation Board

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MINUTES OF THE 125th MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD January 14, 2009

BOARD MEMBERS IN ATTENDANCE

Jim Rocco
John Hull
Duane Cable
Cheryl Hilvert
Steve Hightower
Tom Kmiec
Don Kuchta
Tom Stephenson


EX-OFFICIO MEMBERS IN ATTENDANCE

George Horvath, representing the Ohio Department of Commerce
Jake Wozniak, representing the Ohio Treasurer of State

OTHERS IN ATTENDANCE

Starr Richmond	Executive Director, PUSTRCB
David Reeder	Assistant Director, PUSTRCB
Don Leasor	Chief Fiscal Officer, PUSTRCB
Cindy Duann	Environmental Claims Supervisor, PUSTRCB
Donna Kestler	Claims Administrative Assistant, PUSTRCB
Nicole Johnson	Assurability Coordinator, PUSTRCB
John Hickey	Fiscal Specialist, PUSTRCB
Verne Ord	Assistant Bureau Chief, BUSTR
Cheryl Hawkinson	Assistant Attorney General
Adam Campbell	Speedway SuperAmerica
Jay Meglich	Schneider Downs
Kevin J. Brubaker	Schneider Downs
Mike Sawkiewicz	Environmental Compliance Services, Inc.

Minutes submitted by:


Ellen S. Mitton, Administrative Coordinator

Call To Order:

Chairman Rocco convened the one hundred twenty-fifth meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, January 14, 2009, at 10:07 a.m. The following members were in attendance: Jim Rocco; John Hull; Duane Cable; Tom Stephenson; Steve Hightower; Mayor Don Kuchta; Cheryl Hilvert; Tom Kmiec; George Horvath, representing Director Kimberly Zurz, Ohio Department of Commerce; and, Jake Wozniak, representing Richard Cordray, Ohio Treasurer of State.

Chairman Rocco stated that paragraphs two and three of the BUSTR report on page two of the November 12, 2008, previously distributed unapproved minutes referenced an OPMCA meeting. Chairman Rocco said that the meeting was actually held by the Ohio Petroleum Contractors Association (OPCA) and noted that the minutes now before the Board include the correction. He asked if there were any comments, questions, or discussions regarding the minutes from the November board meeting and there were none. Mr. Hull moved to approve the minutes. Ms. Hilvert seconded the motion. A vote was taken and eight members voted in the affirmative. Messrs. Cable and Wozniak abstained. The motion carried.

BUSTR Report:

Chairman Rocco called upon Mr. George Horvath, Bureau Chief, BUSTR, to present the BUSTR report.

Mr. Horvath stated that BUSTR is on track to meet the Energy Act's requirement which mandates the on-site inspection of each underground storage tank (UST) in Ohio every three years. He said that to date there had been inspections at 2,953 facilities with approximately 5,018 facilities remaining for inspection. Mr. Horvath said that as a result of a reassignment of staff to another area to address corrective action enforcement, more cases of notifications of violation are being addressed and, although some facilities have been in the "pipe-line" for several years, more sites are being referred to the Attorney General's office. He stated BUSTR is also focusing on sites which need to be in corrective action.

Mr. Horvath said the BUSTR Rule Revision Advisory Committee, consisting of UST owners and/or operators and other interested parties in Ohio, is tentatively scheduled to meet February 11, 2009. The areas that need addressed are training, secondary containment, and delivery prohibition or "red tagging."

Mr. Horvath said there are currently 3,972 active tank owners representing 7,973 registered facilities and a total of 23,129 registered tanks. He said BUSTR had a total of 3,148 active releases and a total of 1,138 active closures.

Financial Report:

Chairman Rocco called upon Mr. Don Leasor, Chief Fiscal Officer, to present the Financial Report.

Prior to his report, Mr. Leasor introduced Mr. Jay Meglich and Mr. Kevin Brubaker from Schneider Downs to discuss the 2008 fiscal year audit. Mr. Leasor indicated that a copy of the final draft audit had been mailed to each Board member in late December, allowing each member to read through the audit and return comments to him in a timely manner. He said that as a result of the Board members' expeditious feedback, the 2008 fiscal audit had been forwarded to the State Auditor by the December 31, 2008, deadline.

Mr. Meglich stated that this is Schneider Downs' final audit with the Board, as the five-year contract expires with this audit. He stated that with the cooperation and professionalism of the Board, five audits had been finalized within the last three years, including the 2008 report presented today.

Mr. Brubaker was called upon to present a summary of the 2008 audit and financial report. He said that Schneider Downs conducted their audits in accordance with auditing standards generally accepted in the United States and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Mr. Brubaker said the audit included assessing the accounting principles used and the significant estimates made by management as well as evaluating the overall financial statement presentation. He stated that in their opinion, the financial statements audited present fairly the financial position of the Board as of June 30, 2008.

Mr. Brubaker stated Schneider Downs had identified one significant deficiency in internal control. However, this does not rise to the level of a material weakness. The deficiency relates to management's ability to produce a detailed accounts receivable aging schedule which could result in management making estimates relating to collectible accounts that may result in less accurate estimations of collectability. This issue was also identified in the 2007 audit. Mr. Brubaker noted that as a result of that deficiency, management modified the method historically used to estimate the Board's uncollectible accounts, and that management had fully implemented database and procedural changes for fiscal year 2009.

Chairman Rocco noted that as a result of BUSTR's enhanced focus on their enforcement program, the Board's claims reserve estimate had increased by approximately \$3 million for the first time in several years. He said this most likely is due to the fact that older releases, some going back to the early 1990s, are being re-evaluated and owners are once again submitting claim packages for releases that had been inactive for many years. Chairman Rocco said he had written an article for the OPMCA that would summarize this process and a copy would be mailed to each Board member when it became available.

Mr. Leasor stated that as discussed earlier, the contract with Schneider Downs had ended, and the Board is required to begin the Request for Proposal (RFP) process for the next audit cycle. He stated that as in previous years, the staff requests a volunteer from the Board to assist in the proposal selection process. Mr. Leasor said Mr. Chris Geyer volunteered.

Mr. Leasor said that the October and November financials were mailed to each member. He asked if there were any questions or concerns to be discussed. Hearing none, he began his report with the November figures.

Mr. Leasor said that as of November 30, 2008, the unobligated account balance is approximately \$11.47 million. He said that there is an additional amount of just under \$7 million remaining in the obligated account that is set aside for fiscal year 2009 claim settlement payments, and the debt service account is a little over \$7 million.

Mr. Leasor said to date there had been approximately \$14.36 million in tank fees collected, representing 97 per cent of the \$14.7 million budgeted for the 2008 program year.

He noted that the claims expense for November was approximately \$803,000. Mr. Leasor said that as of November 30, 2008, \$4.8 million had been paid for claims this fiscal year.

Mr. Leasor stated that with the exception of cyclical items such as postage, printing and copying, and the trustee expense, all other expense line items are on target for the end of the first quarter.

Claims Report:

Chairman Rocco called on Ms. Cindy Duann, Environmental Claims Supervisor, to present the claims report. Ms. Duann said that currently the total maximum liability of in-house open claims is approximately \$27 million.

She said this amount had decreased from the last report by approximately \$2 million due to a lump sum settlement payment. She said using the historical claim payout of 65 percent, the actual anticipated claim liability of unpaid claims is about \$17.5 million. Ms. Duann said that 1,732 fund eligible sites had received an NFA and the average cleanup cost per NFA site is \$122,723; noting an increased amount of approximately \$1,300 per site as a result of the inclusion of 31 new NFA sites.

Ms. Duann said there are currently 41 claims under appeal. She stated that 76 percent of these claims appealed are from ten individual tank owners represented by the same consultant. Ms. Duann said that settlement addendums had been issued for many of these appeals and we are waiting for more information from the tank owners for some appeals.

She said that in December a total of 190 claims had been settled, which included the lump sum settlement payment of \$1.82 million to a major oil company. This lump sum claim payment settled 136 claims, which had a total net value of approximately \$3 million.

Ms. Duann said that in the last six months a monthly average of 70 claim packages had been received and the staff settled an average of 79 claims per month. She said that the total claim settlement offer to date is \$4.6 million. She said that the average payout rate in this program year is at 66.6 percent.

Ms. Duann said the Board had received a total of 52 eligibility applications so far this program year, averaging nine applications per month and an average of nine applications had been determined monthly. She stated that the current eligibility approval rate is at 73 percent. Ms. Duann said that the eligibility approval rate had improved over the past six program years, noting an increase from 61 percent in program years 2003 and 2004 to above 70 percent in program years 2007 and 2008. She said currently there are 21 eligibility applications awaiting review.

Ms. Duann said the Board had received 82 cost pre-approval applications during the first half of this program year, averaging 14 per month. She said 106 applications had received a response, averaging about 18 per month. Ms. Duann stated that currently there are 49 cost pre-approval applications in-house for review.

New Business

Certificate of Coverage Ratification

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

Ms. Richmond explained that behind Tab 5 there are two lists of owners. The first is a listing of owners who had been issued a program year 2007 Certificate of Coverage; and, behind the blue divider page, a listing of owners who had been denied a program year 2007 Certificate of Coverage. She said that behind Tab 6 there is a list of owners who had been issued a program year 2008 COC. Ms. Richmond said no owners had been denied a program year 2008 COC since the November meeting.

Ms. Richmond said that the process used to review the fee applications and issue or deny a Certificate of Coverage included a review for completeness to determine that full payment had been made, financial responsibility was demonstrated, and BUSTR registration was complete. In a second level of review, BUSTR registration data is considered to determine whether tanks for which coverage is sought are in compliance with BUSTR rules. Ms. Richmond said if there are no issues, the facility receives a Certificate of Coverage.

Ms. Richmond explained that if compliance issues are discovered, notice is provided to owners in accordance with Board rules and the Revised Code. Throughout this process the Board's staff works with owners to correct the fee statement record and/or the BUSTR registration record. She stated that the staff often continues to work with owners even after a determination to deny a Certificate of Coverage had been issued. The Board's rules and the Revised Code make provisions for an appeal of the determinations issued within this process.

Ms. Richmond asked that the Board ratify her actions with respect to the 15 facilities receiving 2007 Certificates of Coverage.

Mr. Hightower moved to ratify the list of 2007 Certificates of Coverage that were granted. Ms. Hilvert seconded. A vote was taken and all were in favor. The motion passed.

Ms. Richmond stated that all of the processes as stated in the Board's rules and the Revised Code were followed in making the determinations for denying Certificates of Coverage. Ms. Richmond asked that the Board ratify her actions with respect to the 16 facilities that were denied a Certificate of Coverage for program year 2007.

Mr. Hull moved to ratify the list of 2007 Certificates of Coverage that were denied. Mr. Cable seconded. A vote was taken and all were in favor. The motion passed.

Ms. Richmond asked that the Board ratify her actions with respect to the 544 facilities receiving 2008 Certificates of Coverage.

Mr. Hull moved to ratify the list of 2008 Certificates of Coverage that were granted. Ms. Hilvert seconded. A vote was taken and all were in favor. The motion passed.

Chairman Rocco called upon Mr. Horvath to discuss the additional BUSTR information sheets located in the front pocket of each member's binder. Mr. Horvath presented statistics regarding the frequency of BUSTR release prevention violations, noting that the number one violation resulted from failure to comply with the financial responsibility requirement. He also presented information regarding the sources and/or causes of BUSTR releases during a two year period; and, a chart delineating the number of BUSTR compliance inspections completed during the first nine months of 2008.

Confirm Next Meeting

Mr. Kmiec made a motion to adjourn the meeting. Mr. Hightower seconded. All were in favor. The next board meeting will be Wednesday, March 11, 2009, beginning at 10:00 a.m. Chairman Rocco also invited members to attend the Rules Committee Meeting, which will be held on March 11th immediately following the conclusion of the Board meeting.