



Petroleum Underground Storage Tank Release Compensation Board

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MINUTES OF THE 130th MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD

January 13, 2010

BOARD MEMBERS IN ATTENDANCE

Jim Rocco
John Hull
Duane Cable
Brian Epperson
Cheryl Hilvert
Don Kuchta
Tom Kmiec
Tom Stephenson

EX-OFFICIO MEMBERS IN ATTENDANCE

Verne Ord, representing Director Kimberly Zurz, Ohio Department of Commerce
Lynn Carter, representing Kevin L. Boyce, Ohio Treasurer of State
Chris Geyer, representing Director Chris Korleski, Ohio Environmental Protection Agency

OTHERS IN ATTENDANCE

Starr Richmond	Executive Director, PUSTRCB
Don Leasor	Chief Fiscal Officer, PUSTRCB
Cindy Duann	Environmental Claims Supervisor, PUSTRCB
Ellen Mitton	Administrative Coordinator, PUSTRCB
Rick Trippel	Environmental Claims Analyst, PUSTRCB
Carla Winfrey	Assurability Analyst, PUSTRCB
Krista Nichols	Accounts Receivable Specialist, PUSTRCB
Nicole Johnson	Assurability Coordinator, PUSTRCB
Cheryl Hawkinson	Assistant Attorney General
B. J. Reed	Speedway SuperAmerica
Sally Scheuermann	Speedway SuperAmerica
Andy Shrock	Parsons
Art Schmitz	Certified Oil Co.
Michael Baker	BJAAM Environmental
Christina Haddad Polesovsky	OPMCA
Jay Meglich	Schneider Downs
Rob Hazel	Schneider Downs

Minutes submitted by:

Ellen S. Mitton

Administrative Coordinator

Call To Order:

Chairman Rocco convened the one hundred thirtieth meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, January 13, 2010. The following members were in attendance: Jim Rocco; John Hull; Duane Cable; Mayor Don Kuchta; Cheryl Hilvert; Brian Epperson, Tom Stephenson; Tom Kmiec; Verne Ord, representing Director Kimberly Zurz, Ohio Department of Commerce; Christopher Geyer, representing Director Chris Korleski, Ohio Environmental Protection Agency; and, Lynn Carter, representing Kevin Boyce, Ohio Treasurer of State.

Chairman Rocco asked if there were any comments, questions, or discussion regarding the minutes from the November board meeting and there were none. Mr. Hull moved to approve the minutes. Mr. Cable seconded the motion. A vote was taken and all voted in the affirmative. The motion carried.

BUSTR Report:

Chairman Rocco called upon Verne Ord, Assistant Bureau Chief, to present the BUSTR report.

Mr. Ord said BUSTR had been busy reallocating resources to focus on the stimulus package money received from the American Reinvestment and Recovery Act (ARRA), which will make funds available for non-fund eligible properties. The Department of Administrative Services (DAS) initiated the Request For Proposals (RFP) and is now in the process of screening contractor proposals with BUSTR. The next step will be to select vendors and award contracts.

Mr. Ord stated that BUSTR continues to work toward completing one of the requirements of the Energy Act, which mandates the on-site inspection of each underground storage tank (UST) in Ohio every three years. He said to date there are 2,878 inspections still to be completed. Mr. Ord noted the current cycle close out date is August 8, 2010. He said that BUSTR previously had been on track to meet the inspection deadline, however, due to staff shortages and the on-going five-year rule review process, BUSTR would be realigning internal resources in order meet the deadline. Mr. Ord stated that the Bureau's focus had been on litigation and ARRA requirements over the past few months.

Mr. Ord said BUSTR had hired five individuals to fill vacant positions within the Bureau, including the administrative assistant position, three environmental specialist positions and an inspector position. Mr. Ord said that due to an in-house promotion, there is now another inspector position open. Mr. Ord stated there are now nine active site coordinators associated with corrective action sites.

Mr. Ord stated that BUSTR continues to work on their process improvement project. He said current processes and policies are being reviewed to improve responsiveness and consistency, especially when it involves working with stakeholders. Mr. Ord said the most recent focus is on updating the database and performing a cost analysis for converting current microfiche records to Intellivue, an electronic document imaging system.

Mr. Ord said the existing BUSTR administrative rules are being reviewed as required by the five-year rule review, while simultaneously drafting new rules to conform to the requirements of the Energy Act of 2005. Mr. Ord explained that the BUSTR Rule Review Advisory Committee is currently meeting in-house to review the numerous petitions that were received. He said the Committee has reviewed only a couple of the rules, noting it is a slow process. He said the petition period had closed and a new rule review schedule with updated target dates was recently posted to BUSTR's website.

Mr. Ord stated there are 22,843 USTs registered with BUSTR and 3,145 active releases at this time.

Financial Report:

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

Audit Update

Mr. Leasor indicated that a draft copy of the management's discussion and analysis and financial statements were located in the front of each Board members' book. Mr. Leasor noted that Mr. Jay Meglich and Mr. Rob Hazel from Schneider Downs were present at the meeting to address any concerns regarding the 2009 fiscal year audit.

Mr. Leasor briefly discussed the draft Management's Discussion and Analysis; Statements of Net Deficit; Statements of Revenues, Expenses and Changes in Net Deficit; Statements of Cash Flows; and Notes to Financial Statements for the years ended June 30, 2009 and 2008. He reported that the reserve for unpaid claims was \$39.8 million at June 30, 2009, which is a decrease from June 30, 2008 of approximately \$2.22 million as a result of claim reimbursements being paid at a rate greater than the increase in the ultimate estimated loss. Mr. Leasor stated that net income was a little over \$5.2 million for fiscal year 2009 and the change in reserve for unpaid claims was the primary contributing factor.

Chairman Rocco stated that this was a change in how the draft statements were being presented to the Board because in previous years, the audit firm had presented it. Since the audit needs to be submitted to the State Auditor's Office on or before January 31, 2010 and the auditors had not had an opportunity to review Don's draft, Don was presenting it. Chairman Rocco asked Jay Meglich with Schneider Downs if he had any additional comments.

Mr. Meglich stated that Schneider Downs had completed the audit fieldwork but had yet to review the draft financial statements in detail. He said he expects Schneider Downs will again issue an unqualified opinion on the financial statements, with a comment similar to the previous audit concerning the accounts receivable process.

Ms. Richmond stated there had been a substantial amount of work completed on the accounts receivables this past year. She said it was time to sit down with Schneider Downs to discuss the information gathered, the analysis completed, and to decide upon the best way to use this information to estimate the uncollectible accounts.

Chairman Rocco suggested that each member, and specifically the members of the Finance Committee, take time to peruse the audit and, if there are questions or comments, please contact Ms. Richmond immediately. He stated the State Auditor had granted an extension until January 31, 2010; therefore, all feedback would need to be submitted to Ms. Richmond or Mr. Leasor by January 22, 2010. Mr. Leasor stated the audit would be filed timely and a copy of the final 2009 audit would be available to members of the Board for final discussion at the March Board meeting.

October and November Financials

Mr. Leasor stated the October and November financials were emailed to each member. He asked if there were any questions or concerns regarding these reports. Hearing none, Mr. Leasor began with the November financials.

Mr. Leasor said as of November 30, 2009, there was a little over \$7.7 million in the obligated account that is set aside for fiscal year 2010 claim settlement payments. He said the current unobligated balance is a little over \$11 million, and another \$6.7 million is held in the debt service account.

Mr. Leasor said the claims expense for November was approximately \$125,000, noting this is below the amount for the same period last year. He said a \$100,000 restitution payment from Mr. Smalley had offset the current year claims payments and is reflected in the November claims line item. Without the restitution payment, claims payments for November would have been about \$225,000. Mr. Leasor said a lump sum settlement offer was made to a major oil company in December; however, at this time they have not responded. He said as of January 12, 2010, a little under \$1.8 million had been paid out in claims this year.

Mr. Leasor said for the temporary services line item the percent expended in relation to the budget is a little high due to the fact that the amount budgeted in this item for the fiscal year was reduced from last year in anticipation of filling the assurability analyst position. He stated that the position had been filled and as the year progresses, we will see the temporary services line item fall within the budgeted amount.

Mr. Leasor said the postage line item, printing and copying line item, and trustee expense line item are cyclical and are expected to be a little high at this time. He said all other expense line items are on target for this time of the fiscal year.

Chairman Rocco recognized Ms. Carla Winfrey, who recently joined the PUSTRCB staff as the assurability analyst. Ms. Winfrey briefly introduced herself.

Claims Report:

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

Ms. Duann said the current total maximum liability of in-house open claims is approximately \$30.2 million. She said using the historical claim payout ratio of 65-70%, the actual anticipated claim liability of unpaid in-house claims is about \$20 million. She said 1,800 fund eligible sites had received an NFA and the average cleanup cost is \$123,741 per NFA site. Ms. Duann said for the 157 NFA sites cleaned up exclusively under BUSTR's 1999 and/or 2005 risk based corrective action (RBCA) rules the average cleanup cost is \$67,780 per site.

Ms. Duann said with the exception of claims submitted by two major oil companies, the staff was currently reviewing claims received in January, 2009, indicating it takes approximately 11-12 months before a claim is reviewed. Ms. Duann said there are currently 20 claims under appeal.

Ms. Duann noted a slightly different but more accurate presentation of the claim settlement summary report by showing the total claims' gross face values, followed by the disallowed non-reimbursable costs, the appropriate deductible amounts applied and finally the settlement amounts. Ms. Duann said in the first six months of this program year, the staff settled 259 claim packages. She said using this approach, there are two ways to draw conclusions from this report: 26.2% of the face value of these 259 claim packages had been disallowed; or, 64.5% of the net value of these claims had been reimbursed.

Ms. Duann said during the first six months of this program year, the claims staff received a total of 419 claims, settled 259 claims, and closed 13 below-deductible claims. Ms. Duann said the 259 claim settlements totaled almost \$2 million with an average payout of \$7,601 per claim. She noted at this time of the year the number of claims settled and total settlement amounts is behind schedule possibly due to staffs' mandatory cost savings days, more detailed management review comments, and the need

for the claims staff to work toward higher productivity. Ms. Richmond stated weekly meetings are being held so that the claims analysts have the opportunity to discuss and resolve any unusual items noted during the review of claims or pre-approval applications and to increase staff consistency in the claims review process. This combined with the detailed management review comments are resulting in a short-term slow down of the claim settlements monthly total. Ms. Duann said the staff continues to strive for a goal to settle 55-60 claims per month.

Ms. Duann said the lump sum settlement agreement with a major oil company unfortunately was not finalized by the end of the year. She said a lump sum amount of \$1.2 million was offered for a group of 96 claims to a major oil company, but to date there had been no response.

Ms. Duann said during the past six months, 39 eligibility applications had been received. She said in that same time period, 49 eligibility applications had been approved and seven applications had been denied, noting an all time high 88% approval rate.

Ms. Duann said in the past six months, the Board received 102 requests for cost pre-approval and responded to 129 requests. She stated on a monthly average, the Board received 17 pre-approval applications and 22 responses were provided.

New Business

Travel Rule Amendments

Chairman Rocco called upon Ms. Richmond to discuss the amendment to the travel rule.

Ms. Richmond stated effective October 1, 2009, the Office of Budget and Management (OBM) issued new amendments to the travel policy. She noted these changes include a new timeline of 90 days from the date of travel to submit travel reimbursement requests. Ms. Richmond said if anyone has not requested reimbursement for travel prior to January 13, 2010, it must be submitted for reimbursement on or before February 15, 2010.

Ms. Richmond said the reimbursement for privately owned vehicle mileage would remain at the rate of 45 cents per mile, which went into effect on May 1, 2009. In addition, meal receipts are not required, however to receive a meal per-diem, the traveler must be required to be on travel status overnight. Both lodging and meal expenses will be reimbursed at the per diem rates established by the U.S. General Services Administration. She said a memo containing more information regarding the amendments had been placed in each Board member's book.

Assistant Director Position

Chairman Rocco informed the Board that the position for the Assistant Director would be posted on the Ohio Hiring Management Systems (OHMS) website in early February. He asked for Board member volunteers to participate on a selection committee to review the selected qualified resumes, and to be available for the interviews and selection process. Mayor Kuchta, Cheryl Hilvert, John Hull, and Chairman Rocco volunteered for this committee. Mr. Hull asked if Ms. Richmond had given thought to reviewing and revising the duties in the position. Ms. Richmond stated that she restructured the position and the position description, which is currently in draft form, would be shared with the selection committee. Ms. Richmond said that once all of the applications were screened, the resumes of the selected applicants would be forwarded to the selection committee members and interviews would be scheduled.

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 2008 Certificate of Coverage; and, behind the blue divider page, a listing of owners who had been denied a program year 2008 Certificate of Coverage. She said behind Tab 6 there is a listing of owners who had been issued a program year 2009 Certificate of Coverage. Ms. Richmond said no owners had been denied a program year 2009 Certificate of Coverage since the November 2009 Board meeting.

Ms. Richmond said 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 was 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 if compliance issues are discovered, notice is provided to owners in accordance with the Board's rules and the Revised Code. Throughout this process the Board's staff works with owners to correct the fee statement record and/or refers the owner to BUSTR to correct the registration record. She stated 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 12 owners of 180 facilities receiving 2008 Certificates of Coverage.

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

Ms. Richmond stated 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 72 owners of the 80 facilities that were denied a Certificate of Coverage for program year 2008.

Mr. Hull moved to ratify the list of 2008 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 142 owners of 778 facilities receiving 2009 Certificates of Coverage.

Mr. Hull moved to ratify the list of 2009 Certificates of Coverage that were granted. Mr. Epperson seconded. A vote was taken and all were in favor. The motion passed.

Chairman Rocco reminded the Board members that their 2009 Financial Disclosure Statement should be arriving at their homes in the very near future. He said the statements must be submitted directly to the Ethics Commission by April 15, 2010. Chairman Rocco said if statements are not received in the mail by the end of January, please contact Ellen Mitton at the Board's office.

Confirm Next Meeting

Chairman Rocco noted that the tentatively scheduled February 10, 2010 meeting had been cancelled.

Mr. Kmiec made a motion to adjourn the meeting. Mayor Kuchta seconded. All were in favor. The next board meeting will be Wednesday, March 10, 2010, beginning at 10:00 a.m.