



Petroleum Underground Storage Tank Release Compensation Board

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MINUTES OF THE 145th MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD January 9, 2013

BOARD MEMBERS IN ATTENDANCE

Jim Rocco
John Hull
Brian Epperson
Steve Hightower
Don Kuchta

EX-OFFICIO MEMBERS IN ATTENDANCE

Bill Hills, representing Director David Goodman, Ohio Department of Commerce
Chris Geyer, representing Director Scott J. Nally, Ohio Environmental Protection Agency

OTHERS IN ATTENDANCE

Starr Richmond	Executive Director, PUSTRCB
Don Leasor	Chief Fiscal Officer, PUSTRCB
Madelin Esquivel	Assistant Director, PUSTRCB
Cindy Duann	Environmental Claims Supervisor, PUSTRCB
Jonathan Maneval	Administrative Coordinator, PUSTRCB
Britanya Poe	Office Assistant, PUSTRCB
Krista Nichols	Accounts Receivable Specialist, PUSTRCB
Michael Grube	Environmental Claims Analyst, PUSTRCB
Matthew Green	Assistant Attorney General
Will Latt	Speedway, LLC
Eric Swaisgood	Speedway, LLC
Christie Kuhlmann	Stantec
Doug Darrah	Cardno ATC
David Biemel	OPMCA

Minutes submitted by:

Jonathan Maneval
Administrative Coordinator

Call to Order:

Chairman Rocco convened the one hundred forty-fifth meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, January 9, 2013. The following members were in attendance: Jim Rocco; John Hull; Brian Epperson; Steve Hightower; Mayor Don Kuchta; Bill Hills, representing Director David Goodman, Ohio Department of Commerce; and Chris Geyer, representing Director Scott J. Nally, Ohio Environmental Protection Agency.

Chairman Rocco noted that there was no word from the Governor's office regarding the reappointment of Cheryl Hilvert and Tom Stephenson, and as a result, they were not attending the meeting. Chairman Rocco said that Bill Bishilany was no longer with the State Treasurer's office, and a replacement designee had not been appointed to represent that office. He said a new Assistant Attorney General, Carla Dowling-Fitzpatrick, has been assigned to work with the Board. However, he noted that Ms. Dowling-Fitzpatrick was unable to attend the meeting, and Matt Green from the Attorney General's office was attending the meeting in her place.

Chairman Rocco reminded members that Financial Disclosure Statements must be filed by May 15, 2013. Mr. Rocco also noted that the statements are no longer being mailed to the members. Instead, the statement will be available for download from the Ethics Commission's website.

As a result of the retirement of Ellen Mitton, Assistant Director Madelin Esquivel was appointed to serve as the Board's new Ethics Officer. Any questions regarding ethics should be directed to her. Chairman Rocco noted as Ethics Officer, Ms. Esquivel will be conducting the annual ethics training.

Minutes:

Chairman Rocco asked if there were any comments or questions regarding the minutes from the November 28, 2012, Board meeting. Chairman Rocco noted that there was one change he wanted to make. Chairman Rocco requested the minutes be changed to indicate the recommendation to maintain the per-tank fees for the 2013 program year was a result of a recommendation by the Chairman and Vice-Chairman. Chairman Rocco noted that a Finance Committee did not exist at the time the recommendation was made, since the Board elected to not appoint committees until the remaining members were appointed by the Governor.

Mr. Hightower moved to approve the minutes as amended. Mr. Epperson seconded. A vote was taken and all members voted in the affirmative. The motion carried.

BUSTR Report:

Chairman Rocco called upon Bill Hills, Bureau Chief, to present the BUSTR report.

Mr. Hills stated that the OTTER database upgrade project was in week 70, and Phase IV is now known as a "Change Order Request." He said the advantage now is that they are going to see the same faces working through the remainder of the project which will hopefully expedite the project.

Mr. Hills said the click-scheduling project was in week 45. He stated the computer tablets are now being used, and they are tying into the OTTER database. He said next week there would be a meeting finalizing all the specifications. Mr. Hills stated the click-scheduling program is moving forward as anticipated and it will be implemented as scheduled.

Mr. Hills reported for the week ending December 28, 2012, there were 14 operational compliance inspections conducted for a total of 7,782 inspections completed for the current grant cycle ending August 8, 2013. He said that BUSTR had a projected target of 6,272 completed inspections, indicating BUSTR is now 24% ahead of projections. Mr. Hills noted that by being ahead of projections, they will be able to perform re-inspections at certain facilities.

Mr. Hills stated that eight No Further Actions (NFAs) were generated for the week ending December 28, 2012, for a total of 158 NFAs for the current grant cycle ending September 30, 2013. He said that BUSTR had a projected target of 162 NFAs, indicating they are three percent (3%) behind those projections.

Mr. Hills noted that the statistical information published in the BUSTR report represented counts as of January 2, 2013, not November 9, 2012, as indicated in the report.

Mr. Hills stated as of January 2, 2013, there are 22,108 registered USTs. Mr. Hills noted that at the same time last year, there were 22,204 USTs registered. The decrease of 96 registered tanks reflects a change of less than one percent (1%). The number of UST owners with registered facilities totaled 3,772 as of January 2, 2013. At the same time last year, there were 3,799 UST owners with registered facilities. Similarly the decrease of 27 owners represents a change of less than one percent (1%). The number of registered UST facilities as of January 2, 2013, was 7,575. Mr. Hills said that last year at the same time, 7,637 UST facilities were registered. Again, the decrease of 62 registered UST facilities represents a change of less than one percent (1%). Mr. Hills stated that these numbers appear to be fairly stable.

Mr. Hills reported there are 2,618 active releases, and the number of active closures is 1,058. He said there have been over 27,000 NFAs generated since the inception of the BUSTR program.

Chairman Rocco asked what the most common deficiencies were that inspectors identified during compliance inspections. Mr. Hills asked if David Biemel from the Ohio Petroleum Marketers & Convenience Store Association (OPMCA) could respond, as he had recently obtained the information from BUSTR Environmental Supervisor, Steven Krichbaum.

Mr. Biemel reported that according to 2012 inspection information, failure to perform annual tests of the automatic line leak detection equipment resulted in the most common deficiency (572 occurrences). The second most common deficiency was failure to perform periodic tests of pressure piping (365 occurrences), and failure to comply with financial responsibility requirements was the third most common deficiency (302 occurrences).

Financial Report:

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

Mr. Leasor stated that Schneider Downs submitted the audited financial statements to the Auditor of State prior to the December 31, 2012, deadline. A copy of the audit report was provided to each of the board members. Mr. Leasor noted that the audit report is subject to review and acceptance by the Auditor of State. He said the Board would be notified when it is released by the Auditor of State, and the report will be made publicly available at that time. Chairman Rocco asked whether there were any changes made to the report following the November Board meeting. Mr. Leasor said minor grammatical and typographical corrections were made.

November Financials

Mr. Leasor said the financial statements for November were emailed to the Board members. He asked if there were any questions or concerns regarding these reports. Hearing none, Mr. Leasor began his report with the November financials.

Mr. Leasor said as of January 8, 2013, the unobligated balance is approximately \$13 million and the obligated account balance is about \$4.75 million. He said the claims expense for November was \$816,000, and approximately \$4.25 million had been paid for claims this fiscal year as of January 8, 2013.

Mr. Leasor reported that approximately 98.2% of the budgeted revenues, net of refunds, were collected as of November 30, 2012. He stated the total operating expenses for the month of November were approximately \$175,000. Mr. Leasor noted the salary line item was slightly higher in November due to the statewide annual voluntary payout of sick and personal leave. Mr. Leasor noted that once a year, employees can elect to be paid for unused personal leave and sick leave at a reduced percentage based upon the amount of sick leave used throughout the year.

Mr. Leasor pointed out that under the Legal and Professional line item, the AG collection costs were approximately \$20,200 in November. He stated that this increase was primarily the result of Special Counsel costs of approximately \$12,900. When the Attorney General's office is unable to collect delinquent fees certified to their office for collection, the fees are forwarded to Special Counsel for collection. If Special Counsel collects the delinquent fees, they are paid collection costs equaling 33.3% of the amount collected.

Mr. Leasor stated that as of November 30, 2012, postage expenses were approximately 70% of the amount budgeted. He noted this is due to the postage fees for the final quarter of fiscal year 2012 being paid in August. This included the postage costs for the June 2012 newsletter and the annual fee assessment statement mailing, which was sent by certified mail. Mr. Leasor pointed out that this falls in line with prior years' expenses for the same time period.

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

There was a brief discussion on collection costs and its relationship to the collection of fees certified to the Attorney General's office.

Mr. Leasor stated that he had one additional item in his Financial Report concerning the migration of the Board's old legacy database system known as Rbase to a Windows Access 2010 database. This project involves the migration of the data, design of an interface, testing, and roll-out of the application for multiple users. Users will not have the ability to update or alter the

historical data that was brought over to the new application from the legacy system. Mr. Leasor stated the new Access database will be more user-friendly, and allow for multiple users to access the data at the same time.

Mr. Leasor requested that the Board authorize the Chairman to negotiate and enter into a contract with an IT consultant for the migration of the DOS based legacy database to a Windows Access 2010 database in an amount not to exceed \$7,500.

Chairman Rocco asked if an IT consultant had been identified to do the work for the project. Mr. Leasor confirmed that a consultant was ready to begin the project. Mr. Leasor also noted that the project's cost had been built in to the capital budget.

Chairman Rocco requested a motion to authorize the Chairman to negotiate and enter into a contract or an agreement with a contractor for an amount not to exceed \$7,500 for the purpose of doing the migration of the database. Mr. Geyer so moved. Mayor Kuchta seconded.

Vice Chairman Hull recommended the motion be amended to read that the contract amount would not exceed \$10,000. Chairman Rocco called upon Executive Director Starr Richmond to establish whether \$7,500 was a firm estimate. Ms. Richmond confirmed she had spoken with the IT consultant, and based upon the scope of work, the maximum cost would be \$7,500. Ms. Richmond also noted that \$5,000 was budgeted for the database work in the capital budget. However, she was unable to get the project done for \$5,000.

Vice Chairman Hull questioned whether any additional work would arise during the project that may need to be done at the same time. Director Richmond advised that any additional work would require a change order.

Mr. Geyer submitted an amended motion to authorize the Chairman to enter into a contract for the database migration in the initial amount of \$7,500, and further to authorize the Chairman to approve change orders up to an additional \$2,500, for a total of \$10,000. Mr. Geyer noted that if a change order was needed, there would be no need to come back to the Board. Mr. Hull seconded. A vote was taken and all members were in favor.

Mr. Hightower requested that when the Board obtains bids, that it look for avenues to include minority companies, suppliers and contractors to perform the work.

Compliance/Fee Assessment Report

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

Ms. Esquivel stated as of December 31, 2012, 204 refunds had been paid to 96 owners for a total of \$88,000 paid in the 2012 program year. This amount represents 32% of the refund goal of \$275,000, which was set for the 2012 program year.

Ms. Esquivel said there are 3,431 pending refunds totaling \$1,538,000. Ms. Esquivel stated that an owner's refund is first used to offset any outstanding fees, and any remaining amount is then

paid to the owner. She said thus far in program year 2012, a total of \$24,000 had been used to offset outstanding Fund fees.

Ms. Esquivel stated a total of \$209,494 had been collected by the Attorney General's Office and Special Counsel so far this fiscal year. She said after deducting the collection costs of \$66,225, the net amount received by the Board totaled \$143,270. Ms. Esquivel said 271 accounts have been certified for collection to the Attorney General's office since July 1, 2012. These accounts represent 54 owners for a total of \$620,285. Ms. Esquivel noted that another certification was upcoming and will include any 2012 program year fees that remain unpaid, along with any other delinquent fees identified for certification.

Ms. Esquivel said there are seven appeals of Orders Pursuant to Law currently under review. She said there are two Determinations to Deny a Certificate of Coverage currently under appeal. She said four Ability to Pay Applications are currently pending. This program allows former UST owners experiencing financial difficulty to apply for and receive a determination of their ability to pay delinquent fees.

Ms. Esquivel said the number of owners that were issued a 2012 Certificate of Coverage is 3,071. She said the number of owners with Certificate of Coverage Applications currently in process is 223. She said there are 88 unresolved Pending Denials and 35 unresolved Determinations to Deny a Certificate of Coverage.

Ms. Esquivel said the unclaimed monies and refunds pending amounts remain the same as she reported at the November meeting. She said there remain 14 uncashed refund checks that total \$4,625. She said there are 69 owners from whom we have requested more information. These pending refunds total \$73,520.

Vice Chairman Hull questioned where the refund paid expense is reported in the monthly income statement. Chief Fiscal Officer Don Leasor stated tank fee revenue is reported net of refunds paid.

Chairman Rocco questioned what happens with unclaimed monies. Ms. Esquivel stated we are implementing a new policy to move the monies into a separate account. Chief Fiscal Officer Don Leasor confirmed that a new account was recently created with the State Treasurer's office for the specific purpose of holding the unclaimed monies, and Mr. Leasor said we will be moving the unclaimed monies into that account. Chairman Rocco asked how long the funds must be held in the unclaimed monies account. Ms. Esquivel advised the monies must be held for five years.

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 just under \$27 million. She said using the historical claim payout ratio of 70%, the actual anticipated claim liability of unpaid in-house claims is about \$19 million. She stated, as of January 2, 2013, a total of 2,079 Fund eligible sites had been issued NFAs with an average cleanup cost of \$127,200 per site.

Ms. Duann noted since the inception of the Fund in 1989, only eight Fund eligible sites have maxed out the claim reimbursement cap of \$1 million less the deductible. Ms. Duann stated she anticipates a ninth site will reach the claim reimbursement cap in the next month. She said of these nine sites, two are regional transit authorities, two are manufacturing companies and the remaining five sites are service stations.

Ms. Duann stated currently there are 1,692 open claims pending review; and only 15 claim settlement determinations are under appeal.

Ms. Duann said that during the past six months, we received an average of 57 claims per month, and settled or closed an average of 65 claims per month. She noted a total claim settlement of more than \$4 million has been offered so far this program year. Ms. Duann stated she hopes another \$3 million to \$4 million in claim settlements will be offered in the next six months. This would bring the total claim settlement offer for the 2012 program year to \$7.5 to \$8 million.

Ms. Duann said in the past six months, 41 eligibility applications were received and 35 determinations of eligibility were issued. She said of the 35 eligibility determinations, 23 applications were approved, and 12 applications were denied; with an approval ratio of 66%. She said currently there are 20 eligibility applications pending review.

Ms. Duann said that during the last six months, 85 requests for cost pre-approval were received, and 111 cost pre-approval notifications were issued. Ms. Duann noted that only nine remedial action plan (RAP) cost pre-approvals were received so far for the 2012 program year, which represents a decrease in comparison to previous years. Ms. Duann also noted that fewer requests for preapproval of costs for monitoring plans and model calibration plans have been received. This decrease is likely a result of the rule change in November 2009 that now requires cost preapproval for only monitoring plans or model calibration plans with estimated costs greater than \$6,000. She said there are currently 69 open cost pre-approvals pending review.

Chairman Rocco noted that the number of cost pre-approval requests received so far for the 2012 program year was substantially less in comparison to previous years. Chairman Rocco inquired whether more cost pre-approvals are usually received during the second half of the year. Ms. Duann stated she is not under the impression that more cost pre-approvals are submitted during the second half of the year. Ms. Duann stated she believes the fewer number of cost pre-approval requests is due to more consultants and tank owners understanding that they are not required to seek cost pre-approval for monitoring plans or model calibration plans when the estimated cost is less than \$6,000.

New Business

Hardship Application

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

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. She said 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 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 # 13177-0001/10/29/98 – Kwan Yong Kim dba Kim's Marathon

Ms. Richmond said Mr. Kim is the responsible person for a release at Kim's Marathon, 875 Summit Street in Columbus. The release was discovered in 1998 when the tanks were removed. To date, the Fund has reimbursed Mr. Kim slightly over \$33,000. She said that Mr. Kim currently has one claim in-house with a face value of \$24,000. According to the application, Mr. Kim projected his corrective action costs over the next 12 months will be \$40,000. Ms. Richmond stated that Mr. Kim no longer owns the site, and based on the information in the hardship application, his gross income slightly exceeds his annual household living expenses. He has a net worth of \$130,000, but it is not in liquid assets. Ms. Richmond said based on the U.S. EPA financial capacity test, Mr. Kim does not have adequate cash flow to self-finance corrective actions, and any additional debt would result in his expenses exceeding his income.

Ms. Richmond recommended the Board approve this application and grant hardship status to Mr. Kim. Mr. Hull moved to approve the hardship application. Mr. Epperson seconded and a vote was taken. All members voted in the affirmative. The motion carried.

Old Business

Investments

Chairman Rocco said the Finance Committee had previously met with the office of the State Treasurer of Ohio to discuss investment options other than STAR Ohio. He reminded members that at the September 2012 meeting, the Board discussed moving forward with investments after a presentation to the Board by the Chief Investment Officer of the State Treasurer's Office. Chairman Rocco stated that he, Vice Chairman Hull, Director Starr Richmond and Chief Fiscal Officer Don Leasor had spoken a few times about the investments, and had prepared a recommendation for the Board. He called upon Mr. Leasor to present the recommendation.

Mr. Leasor distributed a chart to the Board members which provided a summary of the investment recommendation. He stated that there is currently \$13 million in the unobligated account, and the recommendation is to invest \$6 million of this \$13 million into two different investment vehicles: the first investment vehicle being U.S. government treasuries and the second being U.S. agency callable bonds. The recommendation is to ladder the investments over a three year period. Instruments in increments of \$1 million would be purchased with maturities of one, two and three years for each of the investment vehicles. He said when each instrument matures, a decision can be made to return the money to the STAR Ohio unobligated account or reinvest it in similar instruments based upon interest rates at that time. He noted if U.S. treasuries

and U.S. agency callable bonds are yielding an interest rate higher than STAR Ohio, it would make sense to reinvest the money.

Mr. Leasor said according to information provided by Gordon Short with the State Treasurer's Office, the interest rate for U.S. treasuries range from .165% for a one year investment to .347% for a three year investment. The interest rate for U.S. agency callable bonds ranges from .25% for a one year investment up to .5% for a three year investment. Mr. Leasor said if the \$6 million was left in STAR Ohio, based upon the current interest rate, the Board would earn approximately \$5,500 in interest each year. However, if the \$6 million was invested in U.S. treasuries and U.S. agency callable bonds, over the same one year period, the Board would earn about \$18,400 in interest. He said this is a gain of about \$13,000 just by moving the money out of STAR Ohio and into U.S. treasuries and U.S. agency callable bonds.

Chairman Rocco advised that the statute limits the Board's investment options. He explained that the proposal is to use three of the available investment options: STAR Ohio, U.S. government treasuries and U.S. agency callable bonds. He said \$7 million would remain in the unobligated account with STAR Ohio, and the remaining \$6 million would be allocated to \$3 million in U.S. treasuries and \$3 million in U.S. agency callable bonds. He said both the treasuries and callable bonds would have a one, two and three year investment plan to start with, and upon maturity each would be reinvested with a maturity of three years. He said these options are relatively safe investments. Chairman Rocco said this approach will give the Board additional income on its money and at the same time, not tie up the \$6 million such that the Board cannot access it at any point in time. He noted that each year the Board will have investments of at least \$2 million reach maturity.

Mr. Hightower asked Mr. Leasor to explain STAR Ohio. Mr. Leasor advised that STAR Ohio is a government investment pool run by the State Treasurer's Office. He said it is designed for agencies similar to the Board, local municipalities and school districts. He said the money is pooled together and invested by the Treasurer's Office. Mr. Geyer pointed out that it involves a lot of short term commercial paper, similar to a money market.

After some additional discussion, Chairman Rocco requested a motion to approve the investment of the \$6 million, and to authorize the Executive Director and the Chief Fiscal Officer to place \$3 million from the unobligated account into U.S. treasuries and an additional \$3 million from the unobligated account into U.S. agency callable bonds with maturity dates laddered over one, two and three years; and to reinvest these funds in like securities upon maturity. Mr. Hightower so moved. Mr. Hull seconded and a vote was taken. All of the members were in favor. The motion passed.

Certificates of Coverage – Ratifications

Chairman Rocco called upon Starr Richmond, Executive Director, to present the lists of owners who had either been issued or denied a Certificate of Coverage for ratification by the Board.

Ms. Richmond said that behind Tabs 7 and 8 are listings of facilities that, since the November Board meeting, had been issued or denied a program year 2011 or 2012 Certificate of Coverage.

Ms. Richmond said that 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 has been 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 had 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/or 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 2011 program year Certificates of Coverage for the 31 facilities included on the list behind Tab 7.

Vice Chairman Hull moved to ratify the issuance of the 2011 Certificates of Coverage for the facilities listed. Mr. Epperson 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 Certificate of Coverage for the 2011 program year for the one facility included on the list behind the Tab 7 blue divider page.

Vice Chairman Hull moved to ratify the denial of the 2011 Certificate of Coverage for the facility listed. Mr. Hills 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 issuance of the 2012 program year Certificates of Coverage for the 109 owners of the 433 facilities included on the list behind Tab 8.

Mr. Hull moved to ratify the issuance of the 2012 Certificates of Coverage for the facilities listed. Mr. Geyer 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 2012 program year Certificates of Coverage for the 35 facilities included on the list behind the Tab 8 blue divider page.

Mayor Kuchta moved to ratify the denial of the 2012 Certificates of Coverage that were listed. Mr. Hightower seconded. A vote was taken and all of the members were in favor. The motion passed.

Confirm Next Meeting

Chairman Rocco stated that there will be a public hearing regarding the proposed new, amended, and rescinded rules on Wednesday, March 20, 2013 at 10:00 a.m. Mr. Rocco said the Board meeting will commence immediately following the public hearing.

Chief Hills made a motion to adjourn the meeting and Mayor Kuchta seconded. All were in favor.