



Petroleum Underground Storage Tank Release Compensation Board

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MINUTES OF THE ONE HUNDRED SEVENTEENTH MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD June 13, 2007

BOARD MEMBERS IN ATTENDANCE

Jim Rocco
John Hull
Duane Cable
Cheryl Hilvert
Scott Hiser
Nancy Kister
Tom Kmiec
Don Kuchta
Tom Stephenson

EX-OFFICIO MEMBERS IN ATTENDANCE

Pete Chace, representing the Ohio Department of Commerce
Chris Geyer, representing the Ohio Environmental Protection Agency
Chris Glaros, representing Ohio Treasurer of State

OTHERS IN ATTENDANCE

James J. Leo	Executive Director, PUSTRCB
Dave Reeder	Assistant Director, PUSTRCB
Starr Richmond	Chief Fiscal Officer, PUSTRCB
John Hickey	Fiscal Specialist, PUSTRCB
Ellen Mitton	Administrative Coordinator, PUSTRCB
Krista Nichols	Accounts Receivable Specialist, PUSTRCB
Michael Grube	Environmental Claims Analyst
Carol Anne McConnell	Claims Administrative Assistant, PUSTRCB
Cheryl Hawkinson	Assistant Attorney General
Andy Shrock	Parsons
Doug Darrah	ATC Associates
Brian Epperson	Speedway SuperAmerica
Suzanne Fisher	McMahon, DeGuis
Megan Lashutka	Ohio Petroleum Council
Jennifer Rhoads	OPMCA
Lindsay Trittipoe	NatLUST

Minutes submitted by:


Ellen S. Mitton, Administrative Coordinator

Call To Order:

Chairman Rocco convened the one hundred seventeenth meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, June 13, 2007 at 10:05 a.m. Mr. Leo called the roll and the following members were in attendance: Jim Rocco; John Hull; Scott Hiser; Nancy Kister; Tom Stephenson; Mayor Don Kuchta; Cheryl Hilvert; Tom Kmiec; Duane Cable; Chris Glaros, representing Ohio Treasurer of State Richard Cordray; Pete Chace, representing Director Kimberly Zurz, Ohio Department of Commerce; and, Chris Geyer, representing Director Chris Korleski, Ohio Environmental Protection Agency.

The Chairman said there was a typographical error in the June 14, 2006, minutes and called on the Executive Director to explain. Mr. Leo stated that at the June 14, 2006, Board meeting, Ms. Richmond presented the Capital Budget and requested the Board to approve a request for an additional \$12,500 for slight changes to the STARRS database system. The minutes of that meeting indicate that an amount of \$5,000 was requested and approved.

Mr. Hull moved to retroactively correct and approve the minutes of the June 14, 2006 meeting to read, "She said that an additional \$12,500 was requested for slight changes to the STARRS database as a result of the recent rule changes regarding property transfer fees." Mr. Geyer seconded. All were in favor and the motion passed.

Chairman Rocco then asked if there were any comments, questions, or discussions regarding the minutes from the March 14, 2007, board meeting and there were none. Ms. Hilvert moved to approve the minutes. Mr. Glaros seconded the motion. A vote was taken and eleven of the members were in favor. Mayor Kuchta abstained. The motion passed.

BUSTR Report:

Mr. Chace said that there would be significant changes brought about by the Federal Energy Bill, House Bill 6. The new provisions include new training requirements for individuals operating or maintaining underground storage tank (UST) systems, requirements that Bureau of Underground Storage Tank Regulations (BUSTR) perform compliance inspections of registered UST systems at least once every three years, a delivery prohibition for noncompliant systems, a requirement for new UST systems within 1,000 feet of a drinking water source, and a UST installer certification program.

Mr. Chace stated that BUSTR would be amending some regulations of the Ohio Administrative Code section 1301:7-7-9 to comply with recent changes in the federal law. He stated that a UST Advisory Committee (the committee) consisting of owners and operators of USTs and other interested parties would be meeting again on June 27, 2007.

Mr. Chace said that it would be a matter of a rule revision to meet the requirement of secondary containment rules and the committee would be working on the details of that revision and expected to have it finalized by the end of the year or early 2008.

He said the committee would also discuss in further detail the "red tag program" to prohibit delivery if a tank were found to be noncompliant and to develop a proposed statute change. Mr.

Chace stated the committee is in general agreement regarding the statute change and it would be in final form soon.

Mr. Chace stated that the U.S. EPA released in draft form the guidelines for the implementation of the operator-training requirement. He stated the U.S. EPA had defined three kinds of tank operators; i.e., Class A (tank owner), Class B (maintenance director and/or tank operator), Class C (“the person behind the counter”). BUSTR expects the final version of the EPA guidelines to be less restrictive regarding certification requirements for Class A and Class B operators than the current draft version. This part of the new requirements will be addressed when the U.S. EPA guidelines are in final form.

Mr. Chace stated BUSTR would be receiving additional funding from U.S. EPA. Currently BUSTR receives Federal government funding from two sources. One source is from the LUST Trust Fund to run the corrective action program. The other source is from EPA’s State and Tribal Assistant Grant (STAG) and this funding would be increased and utilized to pay for BUSTR to assist in ongoing compliance inspections.

Mr. Chace stated that as a result of the Ohio Department of Commerce/State Fire Marshal co-applying with the Ohio Department of Development, the State Fire Marshal learned that the Revolving Loan Fund from the U.S. EPA would be established as part of their Brownfields program. This Fund contains \$1 million to clean up petroleum releases regulated by BUSTR and \$1 million to clean up releases of certain hazardous substances regulated by Ohio EPA.

Mr. Chace announced that the newly appointed State Fire Marshal is Michael Bell from Toledo, Ohio, and the Chief Deputy Fire Marshal is Don Cooper from Cuyahoga Heights, Ohio.

Financial Report:

Chairman Rocco called on Starr Richmond to present the financial report. Ms. Richmond stated that the fieldwork for the 2006 audit is completed and the actuarial firm contracted by the auditors is reviewing the claim liability study. She said that the final report would be presented at the September Board meeting. Ms. Richmond stated that the 2007 audit is on target to begin in August.

Ms. Richmond stated that the February, March, and April financials were mailed to each member. She asked if there were any questions or comments to be discussed. She noted that since the fiscal year 2007 annualized revenue and expenses would be discussed as part of the operating budget she would not review the financials.

She stated that tank revenue is approximately \$15.5 million, which is \$900,000 more than budgeted. Ms. Richmond stated that the increase includes \$124,500 in transfer fees received from the invoiced amount of \$210,000. She stated that amount also includes a record high \$700,000 received in prior year fees. Ms. Richmond said the recommended increased budget for FY 2008 is \$15,120,000 based on 22,300 USTs and assumes that about 25% of the tanks are assured at the lower deductible. She estimated \$125,000 in property transfer fees and \$500,000 in prior years fees net of refund.

Ms. Richmond said that interest income is about \$1.2 million, which is \$300,000 over budget due to the increased interest rate at Star Ohio. She said the FY 2008 budget is increased to \$1,092,768 using a 5% interest rate.

Ms. Richmond stated that the seminar revenue and expense line item is being held at \$18,000. She explained that the seminars are not for profit and the Board expects to break even. Ms. Richmond said that some seminars are anticipated for the next year.

She said that claims expense in FY 2007 is just over \$9 million, which included \$1.8 million lump sum payment to a major oil company. Ms. Richmond stated that there is currently \$580,000 in settlement offers from April and May. June settlement offers will be combined with the \$580,000 and will be paid in July. Therefore, July will reflect a larger than normal claims expense. As discussed at the Finance Committee meeting, the FY 2008 claims expense budget is at \$9 million.

Ms. Richmond said the salary line item was right on target for FY 2007. The recommended budget for FY 2008 is increased by about \$55,000 to cover approximately \$27,000 for increases in benefits; and, \$28,000 would be held for cost of living adjustments. Ms. Richmond said that the governor recently issued a salary freeze.

She said that the temporary services, office supplies, advertising, staff development, trustee expenses, and printing and copying line items are fairly self-explanatory and have been carried over with no budget change. The rent line item has been increased by \$4,200 because the lease agreement with LeVeque expires on June 30, 2007, and when the Board votes to renew the lease option, the rent increases by that amount.

Ms. Richmond noted that the FY 2008 Legal and Professional expense budget is being held at \$210,000, which includes the Assistant Attorney General and Hearing Officer's services contracts, the audits, and miscellaneous maintenance type costs related to the computer network. This amount will also allow for the hiring of a firm to complete fiscal year 2007 claim liability study.

Ms. Richmond stated that 2007 postage costs were well below budget due to a change in the billing procedure. The costs from the April 2007 fee statement mailing will not be realized until the first quarter of 2008. She recommended a 2008 budget of \$30,000.

She noted that the depreciation expense is on target for the budget in fiscal year 2007. Ms. Richmond recommended an increase of approximately \$10,000 related to the depreciation on the STARRS database.

She said the bond principal payment of \$3,975,000 and the bond interest expense of \$2,085,731 are pre-set and the account will be funded with these amounts.

Hearing no questions regarding the Operating Budget, Ms. Kister moved to approve the Operating Budget as proposed; Mr. Cable seconded. All were in favor and the motion passed.

Ms. Richmond noted that a motion was needed to obligate the claims expense as proposed for fiscal year 2008. Mr. Hull moved to obligate \$9 million for claims expense in fiscal year 2008. Mr. Cable seconded and a vote was taken. All were in favor and the motion passed.

Ms. Richmond continued with the discussion on the proposed Capital Budget. She noted that the Furniture & Equipment line item is being held at \$3,000 stating there were no plans for purchases but she would like to have a minimal amount for unanticipated costs.

She said that the Data Processing & Electronics budget would be maintained at the \$15,000 figure as in fiscal year 2007. This amount includes funds for the purchase of replacement workstations, miscellaneous software, etc. She stated there were no plans for specific purchases at this time.

Ms. Richmond said the STARRS database contract was approved in 2004 for an amount not to exceed \$185,640. The fiscal year 2008 budget request of \$23,351 is for the remaining contract amount and said the STARRS database is very near completion. Ms. Richmond requested an additional \$30,000 related to the database to cover out-of-scope items and other enhancements.

Mr. Hull moved to approve the Capital Budget as proposed. Ms. Hilvert seconded. All were in favor and the motion passed.

Ms. Richmond stated that to date, fees collected for fiscal year 2008 are approximately \$3.6 million, which is 24% of the budgeted amount. This amount represents 5,041 tanks. She stated that this is considerably lower than at this time last year; however, we are still early in the process.

As a follow up to previous discussions, Ms. Richmond said that an independent firm would prepare the Board's claims liability study for fiscal year 2007. This study has been done in-house for the past four years and the Board agreed at its last meeting to have a third-party prepare the 2007 claims study.

Ms. Richmond said that a request for proposal was mailed and three firms responded. The review of the three interested firms showed a not-to-exceed amount ranging from a low estimate of \$35,000 to a high of \$70,000. She stated that the variance in the amounts was a result of the number of hours estimated to complete the study. All firms have highly credentialed and experienced personnel. Ms. Richmond recommended that the Board move forward with the low bidder, Pinnacle Actuarial Resources.

Mr. Hull made a motion to authorize the Chairman to enter into a contract related to the analysis of the claims liability study with Pinnacle Actuarial Resources with a not-to-exceed amount of \$35,000. Mayor Kuchta seconded and all were in favor. The motion passed.

Claims Report:

Chairman Rocco called on Jim Leo to present the claims report. Mr. Leo stated that claims have been submitted for 2,498 sites. He stated that 1,512 sites have no further action (NFA) status and the average payout per site is \$63,429. Mr. Leo noted that the average payout per site cleaned up exclusively under BUSTR's 1999 and 2005 risk based corrective action rules is \$18,935. The average is based on 73 sites that have received NFAs. Mr. Leo stated that currently the number of open claims is 1,340 with a maximum in-house claim liability of approximately \$27.5 million.

Mr. Leo stated the Board has received 886 claim packages with a total net value of just about \$12.3 million in this program year. He said the staff has settled 738 claims and closed 45 claims in program year 2006 with a net value of \$13,350,901 and a settlement offer of \$8.8 million. The claims staff was able to reach the budgeted amount earlier this year due to a lump sum payment of \$1,832,000 paid in January to a large oil company.

Mr. Leo said the Board has 5 open eligibility applications. He stated the staff now responds to each application within 30 days of receipt. Mr. Leo stated that with one more month left in the 2006 program year, 98 eligibility applications have been received, 67 have been approved, and 34 applications have been denied.

Mr. Leo said that to date, there are 37 open mandatory cost pre-approvals. He stated that of those 37, the staff is waiting for more information from 17 applicants before the review can be finalized. Mr. Leo said 183 pre-approval applications were received in program year 2006 and 247 were determined.

Chairman Rocco requested and was granted permission by the Board to move the NatLUST presentation by Mr. Lindsay Trittipoe to the last item under New Business on the agenda.

New Business

Hardship Applications

Claim #8676-0001/06/29/92, dba Luther's Lincoln Oil & Gas – Ralph P. Halter, Owner

Mr. Leo presented the hardship application for owner #8676, doing business as Luther's Lincoln Oil & Gas, owned by Mr. Halter in Minerva, Ohio. Mr. Leo indicated that this is a renewal application. He said Mr. Halter was granted his first hardship status on June 14, 2006 and the status would expire on June 13, 2007. Mr. Leo said that in addition to the review of the hardship application, a US Environmental Protection Agency (EPA) financial capacity test was used to determine Mr. Halter's ability to carry debt. He said that the test determined that Mr. Halter would not be able to carry the debt. Mr. Leo recommended that the Board approve this application and grant hardship status. Mayor Kuchta moved to approve. Mr. Geyer seconded and all were in favor.

Claim #20216-0001, dba Star General Enterprises, Inc., Muhammad Ibrahim - Owner

Mr. Leo presented the hardship application for owner #20216, dba Star General Enterprises, located in Zanesville, Ohio. The facility is owned and operated by Mr. Ibrahim. Mr. Leo indicated that this is a renewal application. He said Mr. Ibrahim was granted his first hardship status on November 16, 2005 and the hardship status expired on November 16, 2006. Mr. Leo stated that in addition to the review of the hardship application, a US Environmental Protection Agency (EPA) financial capacity test was used to determine Mr. Ibrahim's ability to carry debt. He said that the test determined that Mr. Ibrahim would not be able to carry the debt. Mr. Leo recommended that the Board approve this application and grant hardship status. Mr. Hull moved to approve the hardship application. Mr. Cable seconded and all were in favor.

Claim #870-0001/06/25/97, Beech Brook

Mr. Leo presented the hardship application for owner #870, Beech Brook, a non-profit organization, located in Pepper Pike, Ohio. Mr. Leo stated that in addition to the review of the hardship application, a US Environmental Protection Agency (EPA) financial capacity test was used to determine the corporation's ability to carry debt. Mr. Leo stated that the financial capacity test had been based on corporation data, not personal data, supplied by Beech Brook. Mr. Leo said that it was determined the organization could carry the debt. Mr. Leo recommended that the Board deny this application. Mr. Hull moved to deny this hardship application. Mr. Geyer seconded and all were in favor.

Board Hearing Officer Contract

Chairman Rocco said that Mr. Howard Silver had agreed to extend his contract as the Board's hearing officer at the same rate and same terms as previously contracted. This contract will be from July 1, 2007 through June 30, 2008. Mayor Kuchta made a motion to authorize the Chairman to enter into a contract with Howard Silver to be the Board's hearing officer at the same rate and terms as the previous year. Mr. Geyer seconded. A vote was taken and all were in favor. The motion passed.

LeVeque Lease

Chairman Rocco called on Cheryl Hawkinson, Assistant Attorney General, to discuss the lease option renewal regarding the PUSTRCB office space rented from the owners of the LeVeque Tower. She stated the Board is now at the end of the first 2-year lease option, which covered the period of time of July 1, 2005 through June 30, 2007. The original lease was written with a lease option renewal, which stipulated a slight increase in the amount of rent per square foot for the next two years and states the Board would continue to occupy the same office space and dedicated storage space.

Mr. Hull moved to authorize the Chairman to pick up the option on the lease for the Board's office space and dedicated storage space on the 15th floor of the LeVeque Tower for the period of July 1, 2007 through June 20, 2009 and to authorize the Chairman to execute the lease. Mr. Glaros seconded. A vote was taken and all were in favor.

Certificate of Coverage Ratifications

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

Mr. Leo explained that behind Tab 8 there is a list of owners who had been issued a Certificate of Coverage for program year 2005.

Mr. Leo 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, that financial responsibility was demonstrated, and that the BUSTR registration was complete. In a second level of review, BUSTR registration is considered to determine whether tanks for which coverage is sought are in compliance with BUSTR rules. Mr. Leo said if there are no issues, the facility receives a Certificate of Coverage. Mr. Leo asked that the Board ratify his actions with respect to the facilities receiving 2005 Certificates of Coverage.

Mr. Hull moved to ratify the list in which 2005 Certificates of Coverage are granted. Mr. Cable seconded. A vote was taken and all were in favor. The motion passed.

Mr. Leo identified the list behind Tab 9 of owners who were denied a Certificate of Coverage in the 2005 program year. He 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. Mr. Leo 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.

He 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. Mr. Leo asked that the Board ratify his actions with respect to the facilities that were denied a Certificate of Coverage in program year 2005.

Mr. Hull moved to ratify the list in which 2005 Certificates of Coverage are denied. Mr. Geyer seconded. A vote was taken and all were in favor. The motion passed.

Mr. Leo continued saying the list behind Tab 10 is a list of owners who had been issued a Certificate of Coverage for program year 2006. He explained the same process was followed with these tank owners as explained previously. Mr. Leo asked that the Board ratify his actions with respect to the facilities that were granted a Certificate of Coverage for program year 2006.

Mr. Hull moved to ratify the list in which Certificates of Coverage are granted for program year 2006. Mr. Geyer seconded and a vote was taken. All were in favor. The motion passed.

He concluded his report with the list of owners behind Tab 11 who had been denied a Certificate of Coverage in program year 2006. Mr. Leo repeated the process followed associated with the denials and asked that the Board ratify his actions with respect to this list of facilities.

Mr. Hull moved to ratify the list in which Certificates of Coverage are denied for the program year 2006. Mr. Geyer seconded. A vote was taken and all were in favor. The motion passed.

NatLUST Presentation

Chairman Rocco introduced Mr. Lindsay Trittipoe, President, NatLUST (National LUST Program Fund) to briefly describe the NatLUST petroleum fund claim financing program and their interest in coming to Ohio.

Mr. Trittipoe stated that NatLUST is a 501(c)(3) corporation that is a non-stock, non-profit organization created to become the successor to a quasi-governmental financial program for the state of Virginia.

He stated the mission of NatLUST is to provide immediate liquidity to responsible parties with approved leaking underground storage tanks (LUST) fund claims where the particular state administered trust fund cannot reimburse claims in a timely manner. Mr. Trittipoe stated that by providing liquidity, NatLUST will help promote the state cleanup fund's statutory goals, which typically include meeting EPA's financial responsibility regulations, as well as promoting a cleaner environment and improved public health through the timely cleanup of discharges from LUSTs.

Executive Session

Chairman Rocco requested a motion to go into executive session pursuant to RC 121.22(G)(1) to discuss the dismissal or discipline of the executive director based upon the Ohio Inspector General's June 8, 2007, report of its investigation. Chairman Rocco invited Peter Thomas and Lisa Eschbacher, Attorney General's Office, to join the Board in executive session.

Mr. Stephenson so moved. Mr. Hull seconded and a roll call vote followed. The following members voted in the affirmative: Messrs. Rocco, Hull, Cable, Hiser, Kmiec, Kuchta, Stephenson, Chace, Geyer, Glaros, and Mss. Hilvert and Kister. There were no nays and the motion passed.

Reconvene Meeting

The Board adjourned from executive session and reconvened the public meeting. Chairman Rocco said that on June 8, 2007, the Ohio Inspector General issued a report of findings with respect to anonymous complaints made against Jim Leo, Executive Director of the Petroleum Board. He stated the report had four recommendations. Chairman Rocco stated that the report requires the Board to provide a response to the Inspector General as to the action taken in response to the recommendations within sixty days of the findings. He stated that while the Board had the opportunity to request an extension, he would like to address these recommendations today and make a positive response within the sixty-day timeframe. Chairman Rocco addressed each recommendation and the Board discussed a course of action.

The recommendations and each course of action follows:

Recommendation 1) That the Board consider all the findings of this report and take appropriate action regarding the executive director.

Mayor Kuchta moved that the Board vote to immediately terminate the executive director, James J. Leo, due to the findings of the Ohio Inspector General released on June 8, 2007. Mr. Kmiec seconded and a roll call vote followed. The following members voted in the affirmative: Messrs. Rocco, Hull, Cable, Hiser, Kmiec, Kuchta, Stephenson, Chace, Geyer, Glaros, and Mss. Hilvert and Kister. There were no nays and the motion passed.

Recommendation 2) That the Board chair or his designee establish a process to review and approve all leave requests and time sheets for the executive director. Although we recognize that the Board chair is three hours away and providing a signature is not always feasible, some Boards have established a system whereby the Board chair gives approval by phone and follows up later with a signature. Other Boards accomplish this review by email or facsimile.

Chairman Rocco stated that the person filling the position of the executive director would submit all leave requests and time sheets electronically by email to the Chairman, an electronic signature would be added and the Chairman would respond by attaching the signed forms to an email and state the requests and/or time sheets were signed.

Recommendation 3) That the Board develop a mandatory training session for new executive directors and Board members. Training should include DAS directives and policies, ethics for state employees, as well as executive orders. The training should be documented in personnel files and updated as needed.

Recommendation 4) That the Board establish a written policy, in accordance with State of Ohio IT Policy IPT-E.8, to address personal use of IT resources, and include this policy in the Employee Handbook.

Following a lengthy discussion regarding recommendations three and four of the Inspector General's report, Mr. Hull moved to:

- a) Authorize the Chairman to appoint an Ethics Officer from internally or to work with another agency (i.e., Attorney General's office) to identify someone to be available for the board staff when there are questions or concerns related to ethics; and,
- b) Authorize the Chairman and a committee consisting of David Reeder, Don Kuchta, Cheryl Hilvert, Cheryl Hawkinson, and Chairman Rocco to formalize a training program as part of an orientation session for the staff, executive directors, and Board members; and,
- c) Authorize the Chairman and the above named committee members to develop a draft policy and implement the draft policy regarding personal use of IT resources on an interim basis until the Board meets in September when the policy can be finalized and voted upon by the Board members; and,
- d) Authorize the Chairman to submit a written response to the Inspector General within the 60-day timeframe describing the new policies to be implemented and other actions taken by the Board.

Ms. Kister seconded and a vote followed. All members voted in favor.

Chairman Rocco said he would submit a copy of the unapproved minutes of this meeting to the Inspector General to make him aware that the Board had taken action on the report's recommendations.

Chairman Rocco recommended that the Board request Dave Reeder to assume the position of Acting Director until the appointment of a permanent Executive Director. Upon Mr. Reeder's agreement, Mr. Hull moved to appoint David W. Reeder as Acting Director. Mr. Stephenson seconded and a vote was taken. All members voted in favor.

Chairman Rocco stated the Board needed a committee to solicit and select an executive director. Messrs. John Hull and Tom Stephenson volunteered and will join Chairman Rocco on this committee. The committee would compose an advertisement regarding the position of Executive Director, select candidates, interview, and choose final candidates to recommend to the Board. Chairman Rocco said he hoped to present the recommendations at the September Board meeting.

Confirm Next Meeting

Mr. Kmiec made a motion to adjourn the meeting. Mr. Stephenson seconded. All were in favor. The next board meeting will be Wednesday, September 12, 2007, beginning at 10:00 a.m.