

**MINUTES OF THE 127th MEETING OF THE  
PETROLEUM UNDERGROUND STORAGE TANK  
RELEASE COMPENSATION BOARD  
June 10, 2009**

**BOARD MEMBERS IN ATTENDANCE**

Jim Rocco  
John Hull  
Duane Cable  
Brian Epperson  
Cheryl Hilvert  
Steve Hightower  
Tom Kmiec  
Tom Stephenson

**EX-OFFICIO MEMBERS IN ATTENDANCE**

George Horvath, representing Director Kimberly Zurz, Ohio Department of Commerce  
Mary Ten Eyck Taylor, 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
Jonathan Maneval	Accounts Receivable Analyst, PUSTRCB
John Hickey	Fiscal Specialist, PUSTRCB
Rick Trippel	Environmental Claims Analyst, PUSTRCB
Homayoun Sharifi	Environmental Claims Analyst, PUSTRCB
Cheryl Hawkinson	Assistant Attorney General
Verne Ord	Assistant Bureau Chief, BUSTR
B. J. Reed	Speedway SuperAmerica
Doug Darrah	ATC Associates
Ken Yokoyama	Parsons
Susan Ashbrook	Deputy Chief Counsel/Assistant Attorney General
James A. Lowe	Attorney
Thomas E. Mellon, Jr.	Attorney
Dennis Pantazis	Attorney
Bob Cohen	ACRM, LLC

Minutes submitted by:

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Ellen S. Mitton, Administrative Coordinator

## **Call To Order:**

Chairman Rocco convened the one hundred twenty-seventh meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, June 10, 2009, at 10:05 a.m. The following members were in attendance: Jim Rocco; John Hull; Duane Cable; Brian Epperson; Tom Stephenson; Steve Hightower; Cheryl Hilvert; Tom Kmiec; George Horvath, representing Director Kimberly Zurz, Ohio Department of Commerce; Christopher Geyer, representing Director Chris Korleski, Ohio Environmental Protection Agency; and, Mary Ten Eyck Taylor, representing Kevin Boyce, Ohio Treasurer of State.

Chairman Rocco welcomed Ms. Mary Ten Eyck Taylor, one of the State Treasurer's staff who will share in the duties of representing Ohio Treasurer of State, Kevin Boyce.

Chairman Rocco asked if there were any comments, questions, or discussions regarding the minutes from the March board meeting and there were none. Mr. Epperson moved to approve the minutes. Mr. Cable seconded the motion. A vote was taken and all members voted in the affirmative. 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 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 that, to date, there had been inspections at 4,211 facilities, which represents approximately 53% of the total facilities.

Mr. Horvath stated that BUSTR is finalizing the placement of one of the two requested additional "Senior Environmental Employee" ("SEE") employees to assist with the in-house release prevention workload. He said another SEE inspector would be hired to perform inspections in Hamilton and Butler counties. The SEE employees are actually employed by the USEPA through the National Asian Pacific Center on Aging. Mr. Horvath stated their salaries are funded through the USEPA.

Mr. Horvath referenced the BUSTR Rule Revision and Energy Act Rules Process agenda located in each member's notebook, stating this agenda had been emailed to all BUSTR registered tank owners. This dialogue rule review meeting will be held June 17-18, 2009, to discuss the rule process and revisions required by the federal Energy Policy Act as well as the five-year rule review. Mr. Horvath said that a web interactivity page is being created that will present a set of instructions regarding the rule process.

Mr. Horvath said that BUSTR is working in conjunction with the Department of Administrative Services as they prepare a request for \$8 million in grant monies made available through the American Recovery and Reinvestment Act of 2009. BUSTR is finalizing a Request for Proposal for the purpose of selecting contractors for investigating and cleaning up sites with a known release but unknown owner. He said that Ohio is one of the top five states receiving the highest amount of LUST Recovery Act funding.

## **Financial Report:**

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

Mr. Leasor stated that the February, March, and April financials were emailed to each member. He asked if there were any questions or concerns regarding these reports. Mr. Leasor said that since the fiscal year 2009 annualized revenue and expenses would be discussed as part of the operating budget, he would not discuss the financials.

### ***Operating Budget***

Mr. Leasor said tank revenue is just over \$15 million, approximately \$257,000 more than budgeted. Mr. Leasor said the recommended budget for fiscal year 2010 is \$14.6 million, based on an estimated 21,700 USTs and the assumption that 25% of the tanks would be assured at the reduced deductible. Mr. Leasor said per tank fees will remain the same at \$600 for the standard deductible and \$800 for the reduced deductible.

Mr. Leasor said property transfer fees are expected to generate approximately \$85,000 in fiscal year 2010.

He stated that prior year fees collected in fiscal year 2009 were approximately \$760,000 and it is expected that \$460,000 in prior year fees, less refunded amounts, will be collected during the upcoming 2010 fiscal year.

Mr. Leasor said that interest income is \$419,371, a negative variance of about 43% due to the fiscal year 2009 budget being based on a 2.5% interest rate. He stated the interest rate had decreased throughout the year from just above 2% to the current rate of about .33%. Mr. Leasor said the fiscal year 2010 recommended budget of \$248,550 is based on a .5% interest rate.

Mr. Leasor said that the miscellaneous income is being held at \$2,000 for fiscal year 2010.

Mr. Leasor stated that both the seminar revenue and seminar expenses line items are being held at \$18,000. He explained that the Board did not hold any seminars during this fiscal year, but anticipates the need to hold seminars in conjunction with BUSTR in the upcoming fiscal year in response to both the Board's and BUSTR's five-year rule reviews.

Mr. Leasor said that claims expense budgeted in fiscal year 2009 was \$9 million and the actual claims expense is just over \$8.4 million. He stated the proposed fiscal year 2010 claims expense budget is being held at \$9 million.

Mr. Leasor said that the salary line item budgeted for fiscal year 2009 was \$1.14 million, and actual expenditures were just over \$1.1 million. He recommended the fiscal year 2010 budget for salaries be set at \$1,115,000. He said this reflects filling one vacant position, anticipated leave pay-out, and fringe costs of about 37%. Mr. Leasor stated all salaries are frozen at current levels.

Mr. Leasor noted that office supplies, advertising, staff development, travel, and postage line items are self-explanatory and have been carried over with no changes in the recommended budget amounts.

Mr. Leasor stated that the temporary services line item actual expenditure is almost \$47,000 of the budgeted \$55,000 for fiscal year 2009. He said the recommended amount for fiscal year 2010 is \$34,000, allowing for the continuation of a temporary employee for six months while the vacancy is filled.

Mr. Leasor said the rent line item budgeted at \$103,798 includes the pre-negotiated rent increase, as fiscal year 2010 is the first year of a two year lease renewal option. He stated the new two-year lease begins July 1, 2009.

Mr. Leasor noted that the printing and copying expenditures were \$16,900 and exceeded the budget by \$1,900. This was due to the timing of the printing of certificates. The fiscal year 2010 recommended budget is \$16,000.

Mr. Leasor said for fiscal year 2009 actual legal and professional expenditures were \$165,000. He said that the fiscal year 2010 legal and professional expense line item recommended budget is \$195,000 and includes the Assistant Attorney General and Hearing Officer's services contracts, the audits, miscellaneous maintenance costs related to the computer network and STARRS' database, and website hosting of the searchable database. He said that employee expenses for the 2010 budget are recommended at \$15,100 and this includes an anticipated 10% increase in parking expenses for 13 staff members.

Mr. Leasor said the telephone line item was budgeted in fiscal year 2009 at \$9,606 and the actual expenditure was \$9,025. He said the proposed budget of \$9,840 includes web access, web site hosting, and the 1-800 number.

Mr. Leasor stated the depreciation line item expenditures were lower than expected because some anticipated IT equipment was not purchased and the web application was not yet complete. He said the fiscal year 2010 depreciation expense recommended budget is a little over \$69,000.

Mr. Leasor said the trustee expenses were approximately 50% lower than budgeted due to the maturing of the Series A bonds in August 2008. The fiscal year 2010 proposed budgeted amount is \$1,625.

He said the bond principal payment of \$4,530,000 and the bond interest expense of \$1,469,401 are pre-set and the debt service account will be funded with these amounts. Mr. Leasor said that although the first series of bonds matured in August 2008, when the second series of bond were issued, the debt service was scheduled so that it would remain constant at about \$6 million over the life of the bonds.

Hearing no questions regarding the Operating Budget, Mr. Hull moved to approve the Operating Budget as proposed. Mr. Stephenson seconded. All were in favor and the motion passed.

Mr. Leasor noted that a motion was needed to obligate the claims expense as proposed for fiscal year 2010. Mr. Hull moved to obligate \$9 million for claims expense in fiscal year 2010. Mr. Hightower seconded and a vote was taken. All were in favor and the motion passed.

### ***Capital Budget***

Mr. Leasor presented the proposed Capital Budget. He said that the Furniture & Equipment line item is being held at \$3,000 stating there were no plans for purchases, but a minimal amount for unanticipated costs was being requested.

He said that the Data Processing & Electronics budget for computer replacements and other general IT purchases was set at \$15,000 in 2009; however, actual expenses were over \$16,000. Mr. Leasor said that the amount budgeted for fiscal year 2010 is maintained at \$15,000 and includes funds for the purchase of hardware to implement an offsite data backup system, internet tracking and monitoring, and replacement workstations as needed.

Mr. Leasor said the STARRS database contract approved in 2004 has been completed and there is no budget request for 2010.

Mr. Leasor requested \$17,500 related to database out-of-scope and "wouldn't it be nice if" items. He stated that this amount contains enhancements to the database, which would include reorganization of the tracking of reasonable costs and a solution to determine uncollectible accounts, including duplicate billings for previous and current owners.

Mr. Leasor said the proposed 2010 budget for the web application is \$20,000. This money is for project development of a searchable database within the Board's website similar to the one on the BUSTR site. This database would allow constituents to search fees, certificates of coverage, eligibility, and claim packages. The original request of \$40,000 in 2009 was reduced to \$30,000 because a third party will host the site temporarily, thereby eliminating equipments costs for the fiscal year 2010 budget.

Mr. Leasor proposed \$4,000 to replace one of the two copiers in the office. Following a discussion, Chairman Rocco recommended that amount be increased to \$8,000 to ensure a high quality, cost-efficient, time saving copier investment.

Mr. Leasor proposed a total of \$59,500 for the fiscal year 2010 Capital Budget. Mr. Hull moved to approve the Capital Budget as proposed with the additional \$4,000 for the copier for a total of \$63,500. Mr. Stephenson seconded and a vote was taken. All were in favor and the motion passed.

### ***Fee Statement Statistics***

Mr. Leasor stated that to date, fees collected for program year 2008 are about \$14.2 million, which represents 21,593 tanks paid by 3,464 owners. He said as of June 9, 2009, there had been \$760,990 collected for prior year fees net of any refunds.

Mr. Leasor said that for the program year beginning on July 1, \$4.3 million has been collected to date and this represents 29.48% of the \$14.6 million budgeted. He said that so far fees have been paid for 6,625 tanks, representing 30.53% of the 21,700 tanks anticipated to be covered in the upcoming program year.

### ***Audit Update***

Mr. Leasor stated that the Request for Proposal (RFP) for the purpose of selecting an auditor for the next five-year audit cycle was mailed by the Auditor of State's Office to seven qualified firms. He stated that the following three firms responded: Kennedy, Cottrell, Richards with an approximate bid of \$223,000; Bober, Markey, Fedorovich with an approximate bid of \$227,000; and, Schneider Downs with an approximate bid of \$235,000. Mr. Leasor said that the three proposals were reviewed and evaluated by Mr. Geyer, Director Richmond and himself and their recommendation had been forwarded to the Auditor's office for consideration.

A discussion followed as a result of Mr. Hightower's question regarding the bid and selection process for assurance that the RFP had been made available to minority business enterprises (MBE). Mr. Leasor stated that the RFP had been forwarded to seven firms identified through the state Auditor's listing of vendors. He added that three of the seven firms were on the MBE vendor's list. He said that one MBE attended the pre-proposal conference; however, no bids were received from a MBE vendor. Mr. Leasor added that the Board does not have the opportunity to solicit contracts for the audit without working through the Auditor of State's Officer.

Mr. Leasor requested that the Board authorize an expenditure of up to \$235,000 for a five-year contract with the auditor of choice. Mr. Hull so moved and Ms. Hilvert seconded. A vote was taken. All were in favor and the motion passed.

Mr. Leasor requested that the Board authorize the Chairman to negotiate and enter into a contract with the auditing firm of choice and to authorize him to sign a contract for fiscal years 2009 through 2013 on behalf of the Board. Ms. Hilvert so moved. Mr. Epperson seconded. A vote was taken and all were in favor. The motion passed.

### **Claims Report:**

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

Ms. Duann said that the current total maximum liability of in-house open claims is approximately \$27.7 million. She said using the historical claim payout ratio of 70%, the actual anticipated claim liability of unpaid claims is about \$19.4 million. She said that 1,741 fund eligible sites had received an NFA and the average cleanup cost per NFA site is \$123,425. Ms. Duann said that 137 NFA'd sites were cleaned up exclusively under BUSTR's 1999 and/or 2005 risk based correction action (RBCA) rules with an average cleanup cost of \$66,745 per site, which is about 54% of the average cost of all NFA sites. She said for those 77 NFA'd RBCA sites that did reach the deductible amount the average clean-up cost is \$106,067 per site.

Ms. Duann said there are currently 30 claims under appeal. She said that settlement addenda had been issued for many of these appeals; and, more information had been requested from the tank owners for some appeals.

Ms. Duann said that during the last eleven months, the claims staff had received a total of 792 claims with a net value of almost \$11.6 million and settled or closed 742 claims with a similar net value of almost \$11.2 million. She said the staff had focused on settling as many claims as possible during April and May to ensure reaching the \$9 million budget set for the 2008 program year. There were a total of 130 claims settled in that two-month period.

Ms. Duann stated that the \$9 million budgeted for program year 2008 would be met. She said that with one month to go, the actual claims payout to date is \$8.44 million, which includes a lump sum settlement agreement with a major oil company for 136 claims for \$1.8 million.

She said that the average payout rate in this program year is at 71%, which is slightly higher than the average of the last three years' statistics. Ms. Duann stated that if we take out the lump sum claim settlements from December, the average payout rate increases to 75%.

She said that on average for this program year, seven eligibility applications had been received each month and eight applications had been determined per month. Ms. Duann said that in the last eleven months, 58 eligibility applications were approved and 27 denied. She said that averages to one out of three eligibility applications being denied primarily because of either: 1) no release from an assured tank; or, 2) no valid certificate of coverage at the time of the release.

Ms. Duann said that in February the Board received ten RAP cost pre-approval applications for Dual Phase Extraction (DPE) remediation and all ten of the applications were from one consultant. Ms. Duann stated that communications had been established with BUSTR for joint review regarding these expensive RAPs.

Ms. Duann stated there had been a total of 54 monitoring plans submitted in this program year. She explained that under the current rules, monitoring plans are a mandatory cost pre-approval item. Ms. Duann said that under the upcoming proposed rule changes, it would not be necessary to seek pre-approval of costs for those monitoring plans where the estimated costs would not exceed \$6,000. Ms. Duann said that with the rule change, it would significantly minimize the staff's cost pre-approval review time for relatively inexpensive items.

Ms. Duann stated that an average of 17 cost pre-approval applications were received per month, and an average of 18 per month were determined.

## **New Business**

### ***Rule Committee Report***

Chairman Rocco called upon Mr. Tom Stephenson of the Rules Committee to present the final version of the proposed rule changes in accordance with the mandatory five-year rule review process. Mr. Stephenson stated that the Rules Committee had met on several occasions over the past few months to review all of the Board's rules. The following summarizes the proposed rule changes.

#### **No change rules:**

There are two rules that have no changes: 3737-1-09.1 and 3737-1-17.

#### **Clarification/grammar change rules:**

Fifteen rules are being changed to correct grammar issues or provide additional clarification, or require updating as a result of changes to other rules. These changes will have little, if any, affect on procedures. They are: 3737-1-01, 3737-1-02, 3737-1-05, 3737-1-06, 3737-1-08, 3737-1-10, 3737-1-11, 3737-1-12, 3737-1-13, 3737-1-15, 3737-1-16, 3737-1-18, 3737-1-19, 3737-1-20, and 3737-1-21.

#### **Substantial change rules:**

The remaining rules have changes that will, in turn, have a substantial affect on procedures. These changes will have a positive impact on workload, and, as a result, decrease response times for the processing of certificates and pre-approval and claim applications. The following is a brief summary of these changes:

#### **3737-1-03, Definitions:**

Adding the meaning of the phrase "responsible person" to the definition rule was recommended following a discussion regarding the clarification of the meaning of certain terms as they appear in sections 3737.90 to 3737.98 of the Revised Code and rules 3737-1-01 to 3737-1-22 of the Administrative Code. Chairman Rocco asked for a motion to amend the proposed rule to add the definition of responsible person to read, "Responsible person' means a 'responsible person' as defined in division (N) of section 3737.87 of the Revised Code." Mr. Hightower so moved and Mr. Hull seconded. A vote was taken and all were in favor.

#### **3737-1-04, Annual fee and assurability and financial responsibility criteria:**

The proposed changes will eliminate the verification of compliance with the fire marshal's rules prior to the issuance of a certificate of coverage. All other requirements (payment of all fees, certification of compliance with the fire marshal's rules, and financial responsibility for the deductible) will continue. Following a discussion regarding the proposed rule changes relating to the effective date of a certificate of coverage, Chairman Rocco asked for a motion to amend paragraph (E)(1), next to the last sentence, to read, "Payment of the annual fee and any past fees owed, certification of compliance with the fire marshal's rules, and demonstration of financial responsibility for the current fiscal year after July first will result in a certificate of coverage for that fiscal year effective on and after the date the board received full payment due, certification of compliance with the fire marshal's rules, and demonstration of financial responsibility." Mr. Hull so moved and Mr. Geyer seconded. A vote was taken and all were in favor.

#### **3737-1-041.1, Payment of past fees and assurability reinstatement:**

The proposed change eliminates the requirement for an owner, who has not received a certificate for two years, to demonstrate compliance with the fire marshal's rules by submitting copies of monthly leak detection and inventory reconciliation records. Due to the number of property transfers, meeting this requirement has been difficult for many owners. The proposed rule allows flexibility in the process and provides the director with the ability to use alternative methods to determine a responsible person's compliance with the fire marshal's rules.

3737-1-07, Establishing fund eligibility for corrective action costs:

The proposed change clarifies that the initial determination of eligibility is based upon a responsible person's compliance with the fire marshal's UST regulations at the time the release was suspected or confirmed, whichever was first.

3737-1-09, Limitations of fund coverage:

Paragraph (A)(4)(d) is being rewritten to clarify that costs incurred as a result of a voluntary site assessment not performed in accordance with the fire marshal's rules are not reimbursable by the Fund. In addition, paragraph (A)(12) is being changed to authorize reimbursement for costs incurred to continue corrective actions for releases for which the fire marshal rescinded the determination of no further action within five years from the date it was originally issued.

3737-1-12.1, Mandatory and voluntary pre-approval of corrective action costs:

The proposed change to this rule will reduce the requirement to seek pre-approval of costs for specific corrective action activities where the estimated costs will not exceed \$6,000. In particular, pre-approval of costs for Tier 3 evaluations, plans to calibrate or disprove the fate and transport model, and monitoring plans will only be required when the estimated costs exceed \$6,000. In addition, revised cost estimates will be required only when the previously pre-approved costs will be exceeded by 20% or \$6,000, whichever is less, or upon implementation of specific corrective action activities, the estimated costs will exceed \$6,000. Lastly, the proposed rule has a provision to provide notification to the owner that the revised cost estimate will not undergo a pre-approval review, but rather the costs will be considered in accordance with the Board's rules at the time a claim application is filed.

3737-1-22, Subrogation:

This rule sets forth the requirements for notification to the Board when another party causes an accidental release of petroleum for which the Board may have subrogation rights. The proposed changes require the responsible person to provide reasonable advance notification to the Board of any settlement meetings and to cooperate with the Board in its enforcement of its subrogation rights by providing documents, testimony, and access to experts relating to the third party that caused or contributed to the release.

Chairman Rocco asked for a motion to accept the recommendations of the Rules Committee as proposed with the approved amendments. Mr. Horvath so moved and Mr. Hull seconded. A vote was taken and all were in favor.

Ms. Richmond stated the amended proposed rules as approved would be filed and notices will be sent advising of the rules changes and inviting public comment. A public hearing will be held prior to the Board meeting on September 9, 2009, and a hearing by the Joint Committee on Agency Rule Review will follow.

***Linked Deposit Application***

Ms. Richmond stated that this is the first application for a Linked Deposit received by the Board since 2001. She gave a brief description of the program for the benefit of the newer members.

**Owner # 21612, MIRI, Inc., dba Stake's Shortstop, Loudonville, OH**

Ms. Richmond presented the linked deposit for \$100,000 submitted by the Farmers and Savings Bank in Loudonville on behalf of MIRI, Inc. Ms. Richmond stated the owner is in good standing with the Fund. She indicated the application shows there would be three full-time and four part-time jobs saved, and a fifth part-time job created, with this investment.



Mr. Hull moved to approve the application; Ms. Ten Eyck Taylor seconded. A vote was taken and all were in favor. The motion carried.

### ***Hardship Applications***

#### **Claim #20240-0001/05/28/08 Owner – Amanda Carryout Inc.**

Ms. Richmond stated that this application was submitted by Allen C. Frank on behalf of Amanda Carryout Inc. in Amanda, Ohio. Ms. Richmond noted that this is the Carryout's first application for hardship status. She stated there had not been a claim package received to date; however, there is extensive contamination at the site and during the three-week period following the release, 315 gallons of product were recovered. She said there is also gasoline odor in a third-party's residential well.

Ms. Richmond said that in addition to the review of the hardship application, a US Environmental Protection Agency (EPA) financial capacity test was used to determine if Amanda Carryout Inc. had the ability to carry debt. She said that the financial capacity test indicated that the Carryout could not afford corrective action costs.

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

#### **Claim #4358-0001/06/18/97, Owner – George Yano, dba Yano's Automotive Service Center**

Ms. Richmond stated that this application is from George Yano, owner #4358, doing business as Yano's Automotive Service Center in Willowick, Ohio. Ms. Richmond noted that this is Mr. Yano's first application for hardship status. She said the application indicated the Service Center's gross sales decreased over 50% between 2007 and 2008, with less than \$1,000 in 2008 taxable income for the corporation.

Ms. Richmond said that in addition to the review of the hardship application, a US Environmental Protection Agency (EPA) financial capacity test was used to determine if Mr. Yano's company, Yano's Automotive Service Center, had the ability to carry debt. She said that the financial capacity test indicated that Yano's could not afford corrective action costs.

Ms. Richmond recommended that the Board approve this application and grant hardship status to Yano's Automotive Service Center. Mr. Hull moved to approve the application. Mr. Kmiec seconded and a vote was taken. All members voted in the affirmative. The motion carried.

### ***Hearing Officer Contract***

Ms. Richmond said that the contract for Howard Silver, the Board's hearing officer, would expire on June 30, 2009. She talked with Mr. Silver and he has agreed to extend his contract at the same rate and terms as previously contracted. This contract will be from July 1, 2009 through June 30, 2010. Mr. Stephenson made a motion to authorize the Chairman to enter into a contract with Howard Silver to extend his contract to June 30, 2010. Mr. Hightower seconded. A vote was taken and all were in favor.

### ***Assistant Attorney General Memorandum of Understanding***

Ms. Richmond said that the Memorandum of Understanding (MOU) between the Board and the Attorney General regarding the legal services provided to the Board by Ms. Cheryl Hawkinson would expire on June 30, 2009. She said the previous MOU had been for a two-year period; however, this MOU would be for one year beginning July 1, 2009 and ending June 30, 2010, with the ability to renew for a second year. Ms. Richmond

requested that the Board authorize the Chairman to enter into a Memorandum of Understanding with the Attorney General for the continuation of legal services provided by Ms. Hawkinson for the period of July 1, 2009 to June 30, 2010. Mr. Stephenson so moved. Mr. Hull seconded. A vote was taken and all were in favor.

### ***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 9 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 10 there is a list 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.

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 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 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 21 owners of 159 facilities receiving 2007 Certificates of Coverage.

Mr. Stephenson moved to ratify the list of 2007 Certificates of Coverage that were granted. Mr. Hull 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 2 owners of 4 facilities that were denied a Certificate of Coverage for program year 2007.

Mr. Horvath moved to ratify the list of 2007 Certificates of Coverage that were denied. Mr. Hull 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 189 owners of 1,188 facilities receiving 2008 Certificates of Coverage.

Mr. Horvath moved to ratify the list of 2008 Certificates of Coverage that were granted. Mr. Geyer 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 21 owners of 21 facilities that were denied a Certificate of Coverage for program year 2008.

Mr. Horvath 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.

### **Executive Session**

Chairman Rocco requested a motion to go into executive session pursuant to R.C. 121.22 (G)(3) to discuss matters of pending or imminent court action.

Mr. Hull so moved. Mr. Stephenson seconded and a roll call vote followed. The following members voted in the affirmative: Messrs. Rocco, Hull, Cable, Horvath, Hightower, Kmiec, Stephenson, Geyer, and Mss. Hilvert and Ten Eyck Taylor. There were no nays and the motion passed. Mr. Epperson requested and was excused from the Executive Session.

The Board adjourned from executive session and Chairman Rocco reconvened the public meeting.

Chairman Rocco asked that the record reflect that Mr. Stephenson indicated he would not be comfortable presenting a motion for vote that would be made without input from the two absent members representing businesses owning USTs and petroleum dealers. Mr. Stephenson felt the constituencies of those members would not be fairly represented.

Chairman Rocco asked for a motion for the Board to authorize the Attorney General to enter into a contract to retain special counsel to perform a financial recovery analysis for certain tank owners and to report back to the Board the result of that analysis; and, based upon the result of that report, the Board and Attorney General must both approve future action taken in regard to that analysis, and the Board, in consultation with the Attorney General's office, establish a reasonable rate of compensation.

Following further discussion, Mr. Geyer moved to authorize the Attorney General to enter into a contract for special counsel at a reasonable rate of compensation in consultation with the Board to conduct a financial recovery analysis and present the results to the Board for authorization, of future actions, if any. Mr. Kmiec seconded.

Chairman Rocco moved to amend the motion to add the words "by the Board" following the word authorization. Mr. Geyer seconded. A roll call vote followed. The following members voted in the affirmative: Messrs. Rocco, Hull, Cable, Horvath, Kmiec, Stephenson, Geyer, and Ms. Hilvert. There were no nays and the motion passed.

Chairman Rocco said the motion now before the Board is to authorize the Attorney General to enter into a contract for special counsel at a reasonable rate of compensation in consultation with the Board to conduct a financial recovery analysis of certain tank owners and present the results to the Board for authorization by the Board, of future actions, if any. A roll call vote followed. The following members voted in the affirmative: Messrs. Rocco, Hull, Cable, Horvath, Kmiec, Stephenson, Geyer, and Ms. Hilvert. There were no nays and the motion passed. Prior to the vote, Mr. Hightower and Ms. Ten Eyck Taylor requested and were excused from the Executive Session and the remainder of the 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 9, 2009, immediately following the Public Hearing, which begins at 10:00 a.m.