



# Petroleum Underground Storage Tank Release Compensation Board

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## MINUTES OF THE 147th MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD June 12, 2013

### BOARD MEMBERS IN ATTENDANCE

Jim Rocco  
John Hull  
Steve Hightower  
Bruce Kranz  
Don Kuchta  
Tom Stephenson

### EX-OFFICIO MEMBERS IN ATTENDANCE

Bill Hills, representing Director Andre Porter, Ohio Department of Commerce  
Bob Field, representing Josh Mandel, State Treasurer of Ohio

### OTHERS IN ATTENDANCE

Starr Richmond	Executive Director, PUSTRCB
Madelin Esquivel	Assistant Director, PUSTRCB
Don Leasor	Chief Fiscal Officer, PUSTRCB
Cindy Duann	Claims Supervisor, PUSTRCB
Jonathan Maneval	Administrative Coordinator, PUSTRCB
Cindy Knight	Accounts Receivable Analyst, PUSTRCB
Shalonda Lee	Coverage Analyst, PUSTRCB
Michael Grube	Environmental Claims Analyst, PUSTRCB
Carla Dowling-Fitzpatrick	Assistant Attorney General
Howard Silver	Hearing Officer
Michael Baker	BJAAM Environmental, Inc.
Will Latt	Speedway, LLC
Ryan Sabol	Speedway, LLC
Jim Detgen	Cardno ATC
Gary Fricke	Lee and Ryan Environmental Consulting, Inc.
Christie Kuhlmann	Stantec Consulting Services Inc.
David Biemel	OPMCA

Minutes submitted by:

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Jonathan Maneval  
Administrative Coordinator

**Call to Order:**

Chairman Rocco convened the one hundred forty-seventh meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, June 12, 2013. The following members were in attendance: Jim Rocco; John Hull; Steve Hightower; Bruce Kranz; Don Kuchta; Tom Stephenson; Bill Hills, representing Director Andre Porter, Ohio Department of Commerce; and Bob Field, representing Josh Mandel, State Treasurer of Ohio.

Chairman Rocco introduced Bob Field, who was appointed to serve as designee for Josh Mandel, State Treasurer of Ohio. He also introduced Bruce Kranz, who was appointed by Governor Kasich to serve as a Board member with experience in pollution liability insurance. Chairman Rocco noted the Governor reappointed Cheryl Hilvert, and said she was unable to attend the meeting.

**Minutes:**

Chairman Rocco asked if there were any comments or questions regarding the minutes from the April 4, 2013 Board meeting, and there were none. Vice-Chairman Hull moved to approve the minutes. Mr. Hills seconded. A vote was taken and the following members voted in the affirmative: Messrs. Rocco; Hull; Kranz; Kuchta; Stephenson; and Hills. Mr. Field abstained. Mr. Hightower was not present for the vote. The motion passed.

**BUSTR Report:**

Chairman Rocco called upon Bill Hills, Bureau Chief, to present the Bureau of Underground Storage Tank Regulations (BUSTR) report.

Mr. Hills said the BUSTR report is being presented in a new format to maintain consistency with reports presented to the State Fire Council.

Mr. Hills reported the leaking underground storage tank (LUST) side of the program has three staff vacancies, and one Environmental Specialist 2 position is vacant on the corrective actions side of the program.

Mr. Hills said the proposed Revolving Loan Fund is currently in the budget conference committee, and it continues to be viewed favorably. The proposed Fund will provide financing to enable political subdivisions to address the removal of underground storage tank systems.

Mr. Hills said that BUSTR and the Ohio EPA partnered to conduct a series of trainings at the fire academy. The trainings stressed the importance of proper/adequate investigation of soil vapor intrusion to indoor air spaces when a petroleum UST release occurs. He said environmental consultants attended the trainings along with all BUSTR corrective action staff. Given the success of the training, BUSTR and the Ohio EPA are planning additional training sessions in the fall.

Mr. Hills said the OTTER database upgrade project continues to move forward with daily testing and weekly meetings with management. He said the click-scheduling project is also moving forward. Click scheduling is a GPS driven computer program that geographically schedules the inspectors to visit facilities that are located in the same geographical area.

Mr. Hills reported the second three year operational compliance inspection cycle was completed, and BUSTR inspectors are currently performing follow-up inspections and assisting tank owners with specific needs. He said BUSTR is currently 4% behind on its NFA target projections for the corrective action grant cycle ending September 30, 2013. However, he anticipates the goal will be met.

Mr. Hills stated the tank count statistics remain fairly consistent. He said there are about 3,750 owners of 7,500 registered facilities and roughly 22,000 registered USTs.

Mr. Hills said BUSTR received notification from the US EPA Region 5 that the LUST program would receive a 19% cut effective July 1, 2013. He said BUSTR plans to adjust for the cut by leaving the staff vacancies he noted earlier in his report unfilled. He added that the plan will not take any compliance inspectors out of the field.

Vice-Chairman Hull asked how the new tablets and click-scheduling program were working. Mr. Hills responded stating the tablets are still in test mode. He said there are interface problems that need resolved. He said BUSTR staff and the contractor are working hard to get the program up and running as close to July 1, 2013 as possible.

Chairman Rocco asked if the proposed Revolving Loan Fund will be similar to state and federal loans that at times are not paid back. Mr. Hills said the proposed loan program is a true loan and must be repaid. Mr. Hills noted that the Fire Marshal currently has a similar program for fire department equipment. He believes if the bill is passed, the revolving loan program will be handled in a similar fashion. Mr. Field asked how the program will be funded. Mr. Hills explained that monies received as a result of lawsuits and settlements with the State Fire Marshal will be moved into the fund.

### **Financial Report:**

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

#### ***February, March and April Financials***

Mr. Leasor said the February, March and April financials were emailed to each member. He asked if there were any questions or concerns regarding these reports, and there were none. Mr. Leasor said since the fiscal year 2013 annualized revenues and expenses would be discussed as part of the operating budget, he would not review the monthly financial reports.

#### ***Operating Budget***

Mr. Leasor said tank revenue for fiscal year 2013 was budgeted at \$14.1 million for 21,850 USTs, and the actual revenues were just under \$14.4 million. He said this resulted in a favorable variance of about 1.8%. He recommended the tank revenues for fiscal year 2014 be budgeted at \$14 million. He said this estimate was built on the assumption that fees will be received for 20,700 tanks, and 25% of these USTs will be assured at the reduced deductible. He said fees remain at \$600 per tank for coverage at the standard \$55,000 deductible and \$800 per tank for coverage at the \$11,000 reduced deductible.

Mr. Leasor said property transfer fees are projected at \$95,000 for fiscal year 2014. He said a portion of the transfer fees were assessed during the current fiscal year, but are anticipated to be

collected in fiscal year 2014. He stated prior years' fees collected, less refund amounts, are projected to be \$450,000 in fiscal year 2014.

Mr. Leasor said the interest income budgeted for fiscal year 2013 was \$9,500 and the actual interest earnings were approximately \$17,300. He said this favorable variance of \$7,800 was due to the fiscal year 2013 budget being developed using a .06% interest rate, and the actual average interest rate was .08%. He said the fiscal year 2014 anticipated interest income of \$25,600 is based on an interest rate of .06% plus the anticipated interest of \$15,100 from the investments in US Treasuries and US Agency Callable Bonds.

Chairman Rocco requested Mr. Leasor to explain the investments for the benefit of the new Board members. Mr. Leasor said the Board invested \$6 million from the unobligated STAR Ohio account. He said \$3 million was invested in US Treasuries and \$3 million was invested in US Agency Callable Bonds. He said the securities are laddered with one, two and three year terms. As a result, \$2 million will reach maturity each year, and the Board can determine whether to reinvest the money or redeposit it in the STAR Ohio account. He noted the securities were purchased in May 2013.

Mr. Leasor said miscellaneous income is projected to remain at \$1,000 for fiscal year 2014.

Mr. Leasor pointed out the actual total operating income exceeded the amount budgeted for fiscal year 2013 by \$264,000.

Mr. Leasor said the claims expense budgeted in fiscal year 2013 was \$9 million; however, actual claims expense is anticipated to be approximately \$7 million, which is a 22% variance. He stated the proposed budget for the fiscal year 2014 claims expense is \$9 million.

Mr. Leasor said the salary line item budgeted for fiscal year 2013 was \$1,214,000 and actual expenditures were \$1,150,000 resulting in a favorable variance of approximately \$65,000. He said this was due to short term vacancies in two positions during the year. He recommended the 2014 budget for salaries be set at \$1,233,000, which reflects all positions being filled, salaries being frozen at current levels with no cost of living or merit increases, and anticipated fringe costs.

Chairman Rocco asked if fringe costs had increased. Mr. Leasor responded saying the additional \$20,000 requested for the salary line item was solely for increased health care costs and other fringe expenses.

Mr. Leasor said the amounts requested for advertising, staff development and training, travel and postage for fiscal year 2014 were carried over from fiscal year 2013 with no changes.

He said temporary services actual expenses exceeded the budgeted amount by approximately \$4,900 due to the utilization of a temporary employee to fill one of the staff vacancies. He recommended the 2014 budget for temporary services be held at \$15,000.

Mr. Leasor said the landlord notified the Board that the monthly lease will continue at the current rate through June 30, 2015. He said the fiscal year 2014 anticipated rent expense is \$108,500.

Mr. Leasor said the office supplies expenses were \$3,200 below the budgeted amount. He said the amount requested for fiscal year 2014 is \$16,000. He noted this is a \$3,000 increase over the 2013 fiscal year budgeted amount and is due to the anticipated costs to purchase new phones for the transition to a voice over internet protocol (VoIP) phone system.

Mr. Leasor said the actual expenses for printing and copying were \$5,200 below the budgeted amount. He said the recommended budget for fiscal year 2014 is \$15,000, which is a decrease of \$1,500 from the budgeted amount for fiscal year 2013.

Mr. Leasor said legal and professional actual expenses were below the budgeted amount by approximately \$104,000. He explained this variance was due to costs for the collection of delinquent accounts being lower than anticipated; in addition, no costs were incurred for the use of an expert, a contracted database developer or a business analyst.

Mr. Leasor said the amount requested for legal and professional expenses for fiscal year 2014 remains at \$300,000. He said this expense includes the cost for the services of the Assistant Attorney General and a hearing officer, database maintenance, the annual audit, Attorney General and Special Counsel costs related to the collection of delinquent accounts, and other miscellaneous and professional services. He said two items were carried over from fiscal year 2013 - a business analyst to review the claims process and provide suggestions for areas of improvement; and expert witnesses to provide legal testimony related to third party claims.

Mr. Leasor stated employee expenses were \$2,300 below the amount budgeted. He said the anticipated expenses for fiscal year 2014 are \$21,300. He explained the \$2,700 increase from the prior year's expense is due to an increase in the rate for employee parking.

Mr. Leasor said telephone expenses were \$850 below the budgeted amount, and the anticipated telephone expenses for fiscal year 2014 are \$11,000. He said this expense includes web access, website hosting, spam/virus filtering, phone lines, 1-800 number and off-site hosting of the backup hardware.

Mr. Leasor said depreciation expense was below the amount budgeted by \$3,300, and the anticipated depreciation expense for fiscal year 2014 is \$29,000.

Mr. Leasor pointed out that overall, operating expenses were approximately 10.6% below what was budgeted for fiscal year 2013. He stated the recommended fiscal year 2014 operating expense budget total is \$1,788,000.

Chairman Rocco asked whether the recommended telephone budget included the costs for upgrading the internet bandwidth. Mr. Leasor responded stating the upgrade was completed in May 2013 during fiscal year 2013.

Mr. Leasor requested a motion to approve the proposed fiscal year 2014 operating budget. Mayor Kuchta so moved. Vice-Chairman Hull seconded. A vote was taken and all members voted in favor. Mr. Hightower was not present for the vote. The motion passed.

Mr. Leasor requested a motion to obligate \$9 million for the payment of claims for fiscal year 2014. Vice-Chairman Hull so moved. Mayor Kuchta seconded. A vote was taken and all members voted in favor. Mr. Hightower was not present for the vote. The motion passed.

### ***Capital Budget***

Chairman Rocco called upon Mr. Leasor to present the proposed Capital Budget for fiscal year 2014.

Mr. Leasor said the fiscal year 2012 actual expenditures, fiscal year 2013 annualized expenditures and the recommended budget for fiscal year 2014 are presented in the Proposed Capital Budget.

Mr. Leasor said furniture and equipment was budgeted at \$3,000 for fiscal year 2013; however, there were no expenditures for this line item. He said the recommended furniture and equipment budget for fiscal year 2014 is \$10,000. He noted the increase in the budget is for furniture for two offices.

Mr. Leasor said data processing and electronics were budgeted at \$12,000 for fiscal year 2013. He said there were no expenditures for this line item. He said \$12,000 is recommended for data processing and electronics for fiscal year 2014. He noted the requested amount includes \$6,000 for the purchase of a Power over Ethernet switch, which is required for the transition to the VoIP phone system, and \$6,000 for the purchase of pre-packaged software and the replacement of IT related equipment as needed. Chairman Rocco noted the state is phasing out the existing traditional landline phone system, and it is necessary to spend the funds to upgrade the current system to the new VoIP system.

Mr. Leasor said the legacy system is a carryover item from fiscal year 2013, and the amount requested for fiscal year 2014 is \$10,000. He said the money is needed for the migration of the Board's old legacy database system known as Rbase to a Windows Access database. He said the data is used for historical purposes, but there are compatibility issues with the legacy system and Windows 7 operating system. He said moving the data to Microsoft Access will resolve those issues.

Mr. Leasor said the out-of-scope and "wouldn't it be nice if" updates for the STARRS (Statistical Tank and Reimbursement Records System) database were budgeted at \$25,000 for fiscal year 2013. He said there were no expenditures for this item, and the amount requested for fiscal year 2014 is \$25,000 as a carryover item. He said this request is for multiple new modules, which will track subrogation cases and fee-related litigation activities, including foreclosure interventions and joint enforcement actions with BUSTR.

Mr. Leasor said no monies were expended for capital assets in fiscal year 2013 and the recommended fiscal year 2014 budget is \$57,000.

Chairman Rocco asked if there were any questions regarding the proposed capital budget. Vice-Chairman Hull suggested the furniture and equipment line item be increased from \$10,000 to \$15,000, as this may give some opportunity to enhance the work space experience for the Board's staff. Chairman Rocco noted this would bring the total capital budget to \$62,000.

Chairman Rocco requested a motion to approve the proposed fiscal year 2014 capital budget, with the change from \$10,000 to 15,000 for the furniture and equipment line item, for a total of \$62,000. Mayor Kuchta so moved. Vice Chairman Hull seconded. A vote was taken and all members voted in favor. The motion passed.

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

Mr. Leasor stated for the program year 2013 fee statements issued on April 26, 2013, approximately \$14 million was invoiced to 3,477 owners of 21,568 USTs.

Mr. Leasor said as of June 11, 2013, per-tank fees collected were approximately \$5 million, which represents 36% of the billed amount. He said prior year collections for the same period were \$4.4 million.

Mr. Leasor said between July 1, 2012 and June 11, 2013, approximately \$13.8 million was collected for program year 2012 Fund fees and \$541,000 was collected for prior year fees net of any refunds paid.

Mr. Leasor said for program year 2013, just under 16,100 tanks were billed at the standard deductible (\$55,000) per-tank fee and about 5,500 tanks were billed at the reduced deductible (\$11,000) per-tank fee. Mr. Leasor said as of June 11, 2013, the number of tanks paid at the standard deductible rate is a little over 5,300 and slightly less than 2,300 tanks were paid at the reduced deductible rate. He said fees for a total of 7,616 tanks were paid by 1,423 owners. He said this compares to fees being paid for 6,740 tanks by 1,375 owners for the same period of time in the prior year.

Mr. Leasor said for the 2012 program year, 3,300 owners have paid for 20,950 tanks. He indicated this amount would increase by the end of the program year, June 30, 2013.

Mr. Leasor said the \$5 million collected to date represents 35.8% of the \$14 million budgeted for program year 2013. He said so far for program year 2013, fees for 7,616 tanks have been paid, which represents 37% of the fees for the 20,700 tanks budgeted for the program year.

Vice-Chairman Hull noted only 3,477 owners were billed, while the BUSTR report indicates there are 3,750 registered owners. He asked why there is a difference of 273 owners. Chairman Rocco said the BUSTR registration statistics include non-petroleum tanks, such as hazardous tanks.

Chairman Rocco said he is encouraged that collections are over 10% ahead of where they were last year.

### **Compliance/Fee Assessment Report:**

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

Ms. Esquivel reported as of May 31, 2013, \$212,000 was paid in refunds for the 2012 program year. She said this amount is about 77% of the \$275,000 refund goal that was set for the 2012

program year ending June 30, 2013. She said she anticipates getting pretty close to the \$275,000 goal by the end of the year. She noted refunds were paid to 175 owners.

Ms. Esquivel reported there are 3,204 refunds pending for a total of \$1.4 million. She said these refunds have been identified, but have not been reconciled for payment. The reconciliation process is a complete review of an owner's account, including reviewing tank count information provided to the Board, BUSTR registration and compliance information made available to the Board's staff via the internet and payment history to ensure full payment was received.

Ms. Esquivel stated thus far in program year 2012, a total of \$49,794 was used to offset outstanding fees.

Ms. Esquivel said a total of \$359,000 was collected by the Attorney General's Office and Special Counsel so far this fiscal year. She said after deducting the collection costs of \$108,530, the net amount received by the Board totals \$250,900.

Ms. Esquivel reported 604 accounts totaling \$1.9 million were certified to the Attorney General's Office for collection during program year 2012.

Ms. Esquivel said seven Orders Pursuant to Law are currently under appeal. She said six of these Orders are being reviewed and one settlement agreement is pending. She said there are two appeals of Determinations to Deny a Certificate of Coverage currently open, and they are under review.

Ms. Esquivel said four Ability to Pay Applications are in review. The Ability to Pay program allows former UST owners experiencing financial difficulty to apply for and receive a determination of their ability to pay delinquent fees.

Ms. Esquivel reported the Annual Fee Assessment Statements were mailed to 3,477 owners on April 26, 2013. She said 61 fewer fee statements were mailed in comparison to the 2012 program year.

Ms. Esquivel reported that so far for program year 2012, 3,200 owners were issued a 2012 Certificate of Coverage. She said the number of owners with Certificate of Coverage Applications currently in process is 101. She said there are 16 unresolved Pending Denials and 102 unresolved Determinations to Deny a Certificate of Coverage.

Ms. Esquivel stated there are 31 uncashed refund checks that total \$23,000. She said there is \$68,270 in refunds pending for owners from whom more information has been requested.

### **Claims Report:**

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

Ms. Duann said that two new claims analysts were recently hired to fill vacancies resulting from the retirement and resignation of two analysts that had been employed with the Board for many years. She said moving into the 2013 program year, it will be very challenging for the claims department, because it will not be fully staffed until the middle of August and there will be training and a learning curve.



Ms. Duann reported since the beginning of the program year, July 1, 2012, the Board received an average of 62 claims per month, and settled and closed an average of 63 claims per month. She said the total amount projected to be offered for claim settlements this 2012 program year is approximately \$6.5 million.

Ms. Duann pointed out that there was a surge of incoming claims in the months of March, April and May. She said even with the resignation of the one claims analyst in February, the three remaining claim reviewers were able to settle a monthly average of 53 claims during these three months.

Ms. Duann reported since the beginning of the program year, July 1, 2012, 70 eligibility applications were received, and 71 eligibility determinations were issued. She said of those determinations, 54 applications or 76% were approved, and 17 applications were denied. She said currently there are 17 eligibility applications under review.

Ms. Duann said for the 2012 program year, a total of 170 requests for cost pre-approval were received, and 210 cost pre-approval notifications were issued. She said currently only 49 mandatory cost pre-approval requests are pending review.

Ms. Duann stated in the previous six months, the claims staff made significant progress in approving several remedial action plans (RAPs) including six DPE (Dual Phase Extraction) RAPs. She said six new remediation systems will be purchased in the near future, and there is an agreement to expedite the reimbursement of these system costs.

### **New Business**

#### ***Appeal Hearing***

Chairman Rocco called upon Howard Silver, the Board's hearing officer, to present the Report and Recommendation regarding the appeal of an eligibility determination issued to Robert Mooney.

#### **Owner #13818 Eligibility ID #0001, Robert D. Mooney, dba Mooney's Sunoco, 2700 Chagrin Boulevard, Orange Village, Ohio**

Mr. Silver said Robert Mooney is the owner of Mooney's Sunoco, a service station in Orange Village, Ohio. He said that on October 20, 1998, a member of the Orange Village fire department was at the site and observed free product, gasoline, in the tank cavity sump at the site, and a release was reported to the Bureau of Underground Storage Tank Regulations (BUSTR). Nine days later, BUSTR issued a letter to the owner of Mooney's Sunoco, instructing a tank tightness test and site check to be performed. The results of the investigation were to be reported to BUSTR within 60 days.

Mr. Silver said Mooney's Sunoco did not respond to BUSTR's request, and every year BUSTR notified Mooney's Sunoco that it had not responded. He said this continued until 2007.

Mr. Silver stated that two months after the release was reported to BUSTR, Mooney's Sunoco removed the five existing tanks and replaced them with three new tanks.

Mr. Silver said in June 2007, a trench was being dug for a natural gas pipe line at or near the Mooney's Sunoco site, and the excavation workers reported an odor of gasoline. On June 20, 2007, a suspected release at Mooney's Sunoco was reported to BUSTR as a result of the odor the workers encountered.

Mr. Silver said Robert Mooney filed an eligibility application on June 19, 2008 with the Financial Assurance Fund in order to be reimbursed for corrective action costs as a result of the suspected release. He said that Starr Richmond as director of the Financial Assurance Fund denied Mr. Mooney's eligibility application on February 6, 2009 and Mr. Mooney filed an appeal on March 5, 2009.

Mr. Silver said that on May 9, 2011, a hearing was held, and Robert Mooney, Sr. and his son Robert Mooney, Jr. attended the hearing. He said Messrs. Mooney, Sr. and Mooney, Jr. appeared at the hearing without legal counsel. He said after a discussion between all the parties regarding moving forward without legal counsel, Messrs. Mooney, Sr. and Mooney, Jr. contacted their lawyer, and decided they wanted to proceed with the hearing without counsel.

Mr. Silver said he wrote a report to the Board in June 2011, but before the report was presented to the Board, Mr. Mooney, Sr. retained a lawyer, who asked the Board not to act on the report, and instead remand the matter back to Ms. Richmond as director of the Financial Assurance Fund for reconsideration and to issue another determination. If Ms. Richmond were to uphold her February 6, 2009 determination to deny eligibility, then Mr. Mooney requested the hearing be reopened to allow him to present additional evidence.

Mr. Silver explained that the Board approved remanding the matter back to Ms. Richmond, who reviewed the file and determined Mr. Mooney, Sr. was not eligible to seek reimbursement from the Fund. Thereafter the hearing record was reopened and another hearing was held on April 26, 2012.

Mr. Silver stated that Mr. Mooney was represented by legal counsel and they presented an expert at the hearing. He said the expert testified that with the data collected from the site, any release of petroleum product that occurred in 1998 could be distinguished from the release that was reported in June 2007, and because the two releases could be distinguished, Mr. Mooney was entitled to receive compensation for the second release.

Mr. Silver said following briefs of the parties, he wrote a second report and recommendation. He said it was his finding that based on the data available, the contamination that occurred in 1998 cannot be distinguished from the contamination, if any that occurred in 2007. Mr. Silver said the 1998 release was confirmed by BUSTR, and it is known there was a release by the observation of free product. The suspected release in 2007 was not a confirmed release, and there was no evidence to document a release actually occurred in 2007 from the existing tank system, which was installed in 1998.

Mr. Silver stated his second finding was that at the time the suspected release was reported in June 2007, Mooney's Sunoco was out of compliance with the State Fire Marshal's rules because it had not performed the site check and submitted the requested tank testing data.

Mr. Silver stated his final finding was that Mr. Mooney had not proven a release had occurred in 2007, and if it did occur, he was unable to show that the contamination was separate and apart from the contamination that occurred in 1998.

Mr. Silver stated that Ms. Richmond as director of the Financial Assurance Fund was correct as a matter of fact and applicable law in denying the eligibility request from Mooney's Sunoco.

Vice-Chairman Hull made a motion to adopt the hearing officer's recommendation that the Executive Director's denial of Fund eligibility be upheld. Mr. Stephenson seconded. All members voted in the affirmative. The motion passed.

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

Chairman Rocco said the contract for the Board's hearing officer, Howard Silver, will expire on June 30, 2013. He stated Mr. Silver agreed to extend his contract at the same pay rate and terms as previously contracted.

Mayor Kuchta made a motion to authorize the Chairman to renew Mr. Silver's contract for the 2014 fiscal year. Mr. Hightower seconded. A vote was taken and all of the members were in favor. The motion passed.

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

Chairman Rocco said the legal services contract between the Board and the Attorney General's Office was also up for renewal. He said a draft copy of the contract was received and significant changes from previous contracts were proposed.

Chairman Rocco said the current contract specifically names Carla Dowling-Fitzpatrick as the Assistant Attorney General that provides legal services to the Board. He said the current contract also includes specific requirements with respect to travel expenses that are reimbursed by the Board. He said the proposed contract is much broader in that it does not name a specific attorney to provide legal services, and is more generic in what travel expenses will be reimbursed. He stated the proposed contract is also a two-year contract as opposed to the one-year contracts that were executed in the past.

Chairman Rocco called upon Executive Director Starr Richmond to present the financial terms of the proposed contract. Ms. Richmond stated the costs for the first 12 month period of the contract are \$60,300. She said the cost of legal services for the second fiscal year period will be \$61,500. In response to Vice-Chairman Hull's question, Ms. Richmond confirmed the budget just approved included the \$60,300 in the legal and professional services line item. Chairman Rocco said the \$61,500 would be part of the 2014 budget year.

Vice-Chairman Hull made a motion for the Board to authorize the Chairman and the Executive Director to negotiate the language of the new contract with the Attorney General's Office consistent with the Board's goals and practices and to execute a satisfactory contract in an amount not to exceed \$62,000. Mr. Hightower seconded. A vote was taken and all of the members were in favor. The motion passed.

### ***Database Consultant Contract***

Chairman Rocco called upon Don Leasor, Chief Fiscal Officer, to discuss the contract for a database consultant.

Mr. Leasor requested a motion from the Board to authorize the Chairman to negotiate and enter into a database maintenance and consulting services contract for a period up to one year ending on June 30, 2014 in an amount not to exceed \$30,000.

Chairman Rocco asked Mr. Leasor to discuss the history of the position and the purpose of the consultant. Mr. Leasor said a few years ago, the database consultant who had been with the Board for over 10 years acquired a full time position elsewhere and could no longer serve as the Board's consultant. He said two replacement contractors had been hired – both were terminated because they did not meet expectations. As a result there was no consultant for six or more months of the past year. He said the consultant serves to develop new modules and make updates to the Statistical Tank and Reimbursement Records System (STARRS), a 2000 SQL Server database system.

After a discussion regarding the benefits of contracting with a company versus contracting with an individual and giving consideration to minority businesses, Mayor Kuchta moved to adopt the motion requested by Mr. Leasor. Vice-Chairman Hull seconded. Chairman Rocco clarified the motion was to authorize the Chairman to negotiate and enter into a database maintenance and consulting services contract for a period up to one year ending on June 30, 2014 in an amount not to exceed \$30,000.

Mr. Hightower moved to strike the words “and enter into” from the motion. He said his recommended amendment to the motion would require the contract be approved by the Board. Vice-Chairman Hull seconded. After a discussion regarding the timing of the contract and ensuring a diverse pool of candidates are considered for the contract, Chairman Rocco requested Mr. Hightower to participate in the selection process. Mr. Hightower agreed and withdrew his amendment. Vice-Chairman Hull withdrew his second.

Vice-Chairman Hull moved to insert the words “in consultation with board member Steve Hightower” following the words “authorize the Chairman” in the original motion. Mayor Kuchta seconded. Chairman Rocco asked if there were any further questions or discussion and there were none. A vote was taken to amend the motion. All were in favor and the motion was amended.

Chairman Rocco asked if there was any discussion regarding the amended motion on the floor and there was none. A vote was taken, and all were in favor. The motion passed as amended.

### ***Office Lease***

Chairman Rocco stated the current office lease expires on June 30, 2013. The lease has a two year renewal option and a provision to increase the rate. However the landlord indicated that if the Board were to renew the lease, there would be no increase from the current rate.

Chairman Rocco requested a motion to authorize the Chairman and the Executive Director to enter into a rental contract for office space not to exceed \$110,000 per year or a total of \$220,000

for the two-year term of the contract. Vice-Chairman Hull so moved and Mayor Kuchta seconded.

Executive Director Starr Richmond noted that a new contract will not be executed. She said instead, the Board will just be exercising the two-year renewal option of the existing lease. The motion was withdrawn by Messrs. Hull and Kuchta.

Chairman Rocco requested a motion to authorize the Executive Director to notify the lessor that the Board will exercise its renewal option and extend the lease for two years. Vice-Chairman Hull so moved and Mayor Kuchta seconded. A vote was taken and all were in favor. The motion passed.

### ***Hardship Applications***

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 of 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 #3436-0001/01/13/93, Owner – Estate of Edmund Ratajczak, Jacqueline McCown, Executrix**

Ms. Richmond said Jacqueline McCown is the executrix for the estate of her father, Edmund Ratajczak. The estate is the responsible person for a 1992 release that occurred at 6881 Brecksville Road in Independence, Ohio. She said this is the fifth request for hardship status. Ms. Richmond said that to date, the Fund has reimbursed approximately \$341,000 for corrective actions costs for this release. She said there are currently no outstanding claims or unprocessed requests for cost pre-approval for this release.

Ms. Richmond said based on the information provided by Ms. McCown, the estate was reopened in July 2009 and remains open solely for the purpose of continuing the remediation of the release. She said the estate's only remaining asset is \$1,000 in a bank account which exists to hold funds related to the remediation.

Ms. Richmond recommended the Board approve the application and grant hardship status to the Estate of Mr. Ratajczak. Mayor Kuchta so moved and Vice-Chairman Hull seconded. A vote was taken and all members voted in the affirmative. The motion carried.

**Claim #16065-0001/03/25/96, Owner – Lois Jeffers dba Midway Petroleum**

Ms. Richmond said Lois Jeffers and her deceased husband are the responsible persons for a 1996 release at 89 South Main Street in Fredericktown, Ohio. She said they sold the site in March 2007, but have continued the corrective actions at the site. She said this is Mrs. Jeffers' third request for hardship status with the last one expiring in November 2012.

Ms. Richmond said to date, the Fund has reimbursed approximately \$147,000 for corrective actions costs for this release. She said there are currently no outstanding claims or unprocessed requests for cost pre-approval for the release.

Ms. Richmond said Mr. Jeffers passed away in June of 2011 and Mrs. Jeffers is 66 years old and is employed part-time as a home health aide. She said based upon the application, her annual income, including social security, is estimated to be approximately \$29,000, which slightly exceeds her reported household living expenses. She said her only assets are her individual retirement accounts with a value of \$11,000.

Ms. Richmond said that based upon the US EPA financial capacity test, Mrs. Jeffers is unable to self-finance any amount of corrective action costs either by existing assets or a loan.

Ms. Richmond recommended the Board approve the application and grant hardship status to Mrs. Jeffers. Vice-Chairman Hull so moved and Mayor Kuchta seconded. A vote was taken and all members voted in the affirmative. The motion carried.

**Claim #18752-0001/06/11/08, Owner – Charles V. Hanrahan dba Chuck's Citgo**

Ms. Richmond said Mr. Hanrahan is the responsible person for a 2008 release that occurred at 3718 Lawrenceville Drive in Springfield, Ohio. She said this is the fourth request for hardship status submitted by Mr. Hanrahan with his most recent request expiring on June 12, 2013.

Ms. Richmond said to date, the Fund has reimbursed about \$198,000 for corrective actions costs for the release. She said there is currently one claim with a face value of \$8,900 pending review and cost pre-approval was recently granted for \$285,000 for the first year costs associated with dual phase extraction remediation. She said Mr. Hanrahan currently receives no income from the facility, and his cash on-hand and IRA investments are approximately \$9,200 and \$45,400, respectively.

Ms. Richmond said that based on the US EPA financial capacity test, Mr. Hanrahan does not have adequate cash flow or the ability to carry debt in order to pay for the pending corrective action costs.

Ms. Richmond recommended that the Board approve the application and grant hardship status to Mr. Hanrahan. Vice-Chairman Hull so moved and Mr. Hightower seconded. A vote was taken and all members voted in the affirmative. The motion carried.

**Claim #20240-0001/05/28/08, Owner – Allen C. Frank dba Amanda Carryout Inc.**

Ms. Richmond said Amanda Carryout Inc. is the responsible person for a 2008 petroleum release that occurred at 145 East Main Street in Amanda, Ohio. She said this is the fourth request for hardship status submitted by Mr. Frank on behalf of Amanda Carryout with the most recent request expiring on June 12, 2013. She said there are currently no outstanding claims associated

with the release. She said cost pre-approval was recently granted for a voluntary request for \$6,500 to prepare a remedial action plan or RAP.

Ms. Richmond said based upon the information Mr. Frank provided in the hardship application and the US EPA financial capacity test, the ABEL model estimates a 60% probability that Amanda Carryout can afford \$25,000 in corrective action costs. Ms. Richmond said since the carryout does not have adequate cash flow to self-finance corrective action costs, she recommended the Board approve the application and grant hardship status to Amanda Carryout Inc. Mayor Kuchta so moved and Vice-Chairman Hull seconded. A vote was taken and all members voted in the affirmative. The motion carried.

**Claim #21011-0001/04/21/09, Owner – New Vulco Mfg & Sales Co. II, LLC dba Smith’s Marathon**

Ms. Richmond said New Vulco Manufacturing and Sales Co. II, LLC is the responsible person for a 2009 petroleum release that occurred at 298 West Main Street in Lynchburg, Ohio. She said Larry Schirmann submitted the hardship application on behalf of New Vulco, and this is its first request for hardship status. She said there is currently one claim pending review with a face value of \$99,000 and an unapplied deductible of \$11,000.

Ms. Richmond said based upon the information provided in the hardship application and the US EPA financial capacity test, the ABEL model estimates a probability of less than 50% that New Vulco can afford the corrective action costs it has already incurred. She noted that based upon conversations with Mr. Schirmann, the funds used to pay for the corrective action already completed were borrowed from a related company that took out a loan for this purpose.

Ms. Richmond said since New Vulco does not have adequate cash flow to self-finance corrective action costs, and denying hardship status will pose an overwhelming burden on New Vulco, it is her recommendation that the Board approve the application and grant hardship status to New Vulco. Vice-Chairman Hull so moved and Mr. Hightower seconded.

Mr. Hightower asked what the difference was between a hardship claim and regular claim. Chairman Rocco said hardship status accelerates the review of the claim. He added that the amount to be reimbursed is not affected by hardship status.

Chairman Rocco asked if there were any further questions, and there were none. A vote was taken and all members voted in the affirmative. The motion carried.

**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 11, 12 and 13 are listings of facilities that, since the April Board meeting, had been issued or denied a program year 2011, 2012 or 2013 Certificate of Coverage.

Ms. Richmond said 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 was 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 two facilities included on the list behind Tab 11.

Mayor Kuchta moved to ratify the issuance of the 2011 Certificates of Coverage for the facilities listed. Vice-Chairman Hull seconded. A vote was taken and all of the members were in favor. The motion passed.

Ms. Richmond stated no 2011 program year Certificates of Coverage had been denied since the last meeting.

Ms. Richmond requested the Board ratify her actions with respect to the issuance of the 2012 program year Certificates of Coverage for the 67 owners of 96 facilities included on the list behind Tab 12.

Vice-Chairman Hull moved to ratify the issuance of the 2012 Certificates of Coverage for the facilities listed. Mayor Kuchta 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 46 facilities included on the list behind the Tab 12 blue divider page.

Vice-Chairman Hull moved to ratify the denial of the 2012 Certificates of Coverage that were listed. Mayor Kuchta 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 2013 program year Certificates of Coverage for the 747 facilities included on the list behind Tab 13.



Vice-Chairman Hull moved to ratify the issuance of the 2013 Certificates of Coverage for the facilities listed. Mayor Kuchta seconded. A vote was taken and all of the members were in favor. The motion passed.

Ms. Richmond stated that to date, no 2013 program year Certificates of Coverage had been denied.

**Executive Session:**

Chairman Rocco requested a motion to go into executive session with counsel pursuant to O.R.C. 121.22(G)(3) to discuss matters of pending or imminent court action. Vice-Chairman Hull so moved. Mr. Hightower seconded. Chairman Rocco called for a roll call. The following members voted in the affirmative: Messrs. Rocco, Hull, Kuchta, Hightower, Kranz, Stephenson, Hills and Field. There were no nays. The following members were absent for the vote: Ms. Hilvert and Messrs. Epperson, Geyer and Kmiec. The motion passed.

Prior to moving into executive session, Chairman Rocco requested to be recused from the executive session. Chairman Rocco turned the meeting over to Vice-Chairman Hull.

***Reconvene Meeting***

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

Vice-Chairman Hull moved to authorize the Attorney General's Office to continue to work with the Vice-Chairman and the Executive Director regarding the Board's subrogation litigation against the entities identified by Special Counsel and to authorize the Executive Director in consultation with the Vice-Chairman to make all decisions regarding the litigation, including but not limited to matters regarding the investigation, commencement and negotiated settlement of the litigation but specifically excluding the approval of any final settlement agreement which shall be approved by a quorum of the Board. It is understood that the Attorney General's Office and Special Counsel shall keep the Executive Director and the Vice-Chairman informed of all strategy during the course of the litigation including, but not limited to, causes of action, discovery, negotiation and offers of settlement. Where this motion and subsequent authorization is in conflict with any prior motion adopted and/or authorized by the Board with respect to the Board's subrogation claims against the entities identified by Special Counsel, this motion shall prevail and supersede any and all prior authorizations of the Board. Mr. Hightower seconded. A vote was taken and all of the members were in favor. The motion passed.

**Confirm Next Meeting and Adjourn:**

Chairman Rocco stated that the next Board meeting will be on Wednesday, September 14, 2013, at 10:00 a.m.

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