



Petroleum Underground Storage Tank Release Compensation Board

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MINUTES OF THE 164th MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD

June 8, 2016

BOARD MEMBERS IN ATTENDANCE

Jim Rocco
John Hull
Don Bryant
Ron Falconi
Scott Fleming
Tom Stephenson

EX-OFFICIO MEMBERS IN ATTENDANCE

Bill Hills, representing Director Jacqueline Williams, Ohio Department of Commerce
Chris Geyer, representing Director Craig Butler, Ohio Environmental Protection Agency
J.D. Pisula, 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
Hannah Brame	Environmental Claims Analyst I, PUSTRCB
John Hickey	Fiscal Specialist, PUSTRCB
Jennifer Croskey	Assistant Attorney General
Aaren Yandrich	Checks and Balances, Inc. on assignment with PUSTRCB
Bill Behrendt	OPMCA
Rob Oshenbauch	API Ohio
Samantha Lalonde	Speedway
Brent McPherson	ATC Group Services LLC
Doug Darrah	ATC Group Services LLC
Dan Adams	ATC Group Services LLC
Sean Hetrick	BJAAM Environmental, Inc.

Minutes submitted by:


Jonathan Maneval
Administrative Coordinator

Call to Order:

Chairman Rocco convened the one hundred sixty-fourth meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, June 8, 2016.

The following members were in attendance: Jim Rocco; John Hull; Don Bryant; Ron Falconi; Scott Fleming; Tom Stephenson; Bill Hills, representing Director Jacqueline Williams, Ohio Department of Commerce; Chris Geyer, representing Director Craig Butler, Ohio Environmental Protection Agency; and J.D. Pisula, representing Josh Mandel, State Treasurer of Ohio.

Chairman Rocco introduced and welcomed Mayor Ron Falconi, who was recently appointed to the Board to serve as a representative of local governments.

Minutes:

Chairman Rocco asked if there were any comments or questions regarding the minutes from the March 16, 2016 Board meeting, and there were none. Mr. Geyer moved to approve the minutes. Mr. Hills seconded. A vote was taken and the following members voted in the affirmative: Messrs. Bryant, Fleming, Geyer, Hills, Hull, Pisula, Rocco and Stephenson. Mayor Falconi abstained. The minutes were approved as presented.

BUSTR Report:

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

Mr. Hills reported that interviews of five applicants would be conducted to fill the release prevention field supervisor position. He noted that all applicants are within the State Fire Marshal's Office, and include employees from BUSTR, Code Enforcement and the Fire Academy.

Mr. Hills said the third responsible party search program is nearly complete, and over 190 of the 200 petroleum underground storage tank (UST) release sites being researched through the program had been completed by the vendors. He added that the project would be completed by the end of the fiscal year. The program is used to identify the owners and operators that are responsible for the investigation and cleanup of petroleum releases from UST systems.

Mr. Hills reported that the Abandoned Gas Station Cleanup Grant Program administered by the Ohio Development Services Agency, in partnership with the Ohio EPA and BUSTR appears to be off to a successful start. He said \$20 million is available through the program for local government entities to obtain funding to be used for the cleanup of abandoned gas station sites. He said ten grant applications were received, and noted that only one grant request had been denied. He directed members to contact April Stevens with the Development Services Agency with questions about the program.

Mr. Hills said that a number of stakeholder comments had been received in response to the proposed BUSTR administrative rule amendments. He said although public comments were requested by June 3, 2016, additional comments can still be submitted through the State Fire Marshal's website. He said BUSTR's personnel will review all of the comments, and a response will be issued for each comment.

He explained that after the responses are posted, BUSTR will arrange to meet with stakeholders to address any remaining concerns that may require further discussion. He said the goal is to finalize the rule amendments in the month of August in order to meet a November filing deadline.

Mr. Hills reported for the week ending May 21, 2016, there were 47 new inspections performed for a total of 387 inspections for the new three-year inspection cycle. He said that five NFAs (no further actions) were generated during the week ending May 21, 2016, for a total of 335 NFAs for the grant cycle ending September 30, 2016.

Mr. Hills stated that, as of May 21, 2016, there were 21,639 registered USTs, and about 3,600 owners of 7,300 registered facilities.

Financial Reports:

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. He said since the fiscal year 2016 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 the proposed operating budget behind Tab 4 represents the approved budget and actual annualized expenditures for fiscal year 2016, and also presents the recommended budget for fiscal year 2017.

Mr. Leasor reported tank revenue for fiscal year 2016 was budgeted at \$9.5 million for 20,350 USTs, and actual revenues were \$400,000 above the budgeted amount. He said historically 96% of the billed amount is collected, and this year 97% of the billed amount has been received. He noted that in previous years, 26% of the USTs reported to the Board assured at the reduced deductible, but this year 27.6% were assured at the reduced deductible.

He recommended tank revenue for fiscal year 2017 be budgeted at \$9.4 million. He said this estimate was built on the assumption that fees will be received for 20,200 tanks, and 26% of these USTs will be assured at the reduced deductible.

Mr. Leasor said property transfer fees are projected to be \$80,000 for fiscal year 2017. He said a portion of the transfer fees were assessed during the current fiscal year, but are anticipated to be collected in fiscal year 2017. He stated collection of prior years' fees, less anticipated fee refunds, are projected to be \$200,000 in fiscal year 2017.

Mr. Leasor stated interest income is about \$78,000 above the budgeted amount for fiscal year 2016 due to the interest rate for STAR Ohio being higher than anticipated. He explained that the estimate was built using a STAR Ohio interest rate of .05%, but the interest rate had improved and was .5% at the end of May. He said this increase generated about \$40,000 in interest income that was not

anticipated. He said the \$6 million invested in U.S. Treasuries and U.S. Agency Callable Bonds accounted for \$26,000 of additional interest earnings. He said the projected interest income for fiscal year 2017 is \$195,800. He said this anticipated interest income is based on a STAR Ohio interest rate of .5% plus anticipated interest of \$137,000 to be earned on the investments in U.S. Treasuries and U.S. Agency Callable Bonds.

Mr. Leasor reported miscellaneous income received from requests for copies of records, and cash rebates for fiscal year 2016 was \$200. He recommended that miscellaneous income be budgeted at \$1,000 for fiscal year 2017.

Mr. Leasor pointed out that actual total income was \$474,500 above the \$9.5 million amount budgeted for fiscal year 2016.

Mr. Leasor said the claims expense is anticipated to be \$7.2 million for fiscal year 2016. He said in comparison the average claims expense for the past five years was \$7.3 million. He stated the proposed budget for the fiscal year 2017 claims expense is \$9 million.

Mr. Leasor said the salary line item expense was \$240,000 below the amount budgeted for fiscal year 2016. He said this was due to one position being vacant for the year, and another being vacant for about half of the year. He said the line item had also included funding for an additional claims analyst position that was not filled as expected. He recommended the fiscal year 2017 budget for salaries be set at \$1.3 million. He said this amount reflects filling the two vacant positions, the hiring of an additional claims analyst and provides for a 2.5% pay increase for the staff.

Mr. Leasor reported that actual temporary services expenses were above the budgeted amount by about \$23,000. He explained that temporary service employees were utilized to fill the two staff vacancies and accounted for the unexpected costs. He recommended the 2017 budget for temporary services be \$44,000. He said two temporary employees will continue to be used to fill staff vacancies until they can be hired on as full time employees. He said additional funding has been included for the use of a temporary employee for special projects, and to fill unanticipated staff vacancies if necessary.

Mr. Leasor said the Board is currently in a two-year lease agreement ending June 30, 2017, and the anticipated rent expense for fiscal year 2017 is \$121,800.

Mr. Leasor reported that actual expenses for office supplies were \$1,100 above the budgeted amount. He said new guest chairs were purchased for the Board room in fiscal year 2015, however half the cost of the chairs was not paid until fiscal year 2016. He said the amount requested for fiscal year 2017 is \$20,000. He explained that this amount includes monies for the replacement of aging computer monitors, other standard supplies and any pre-packaged software with a cost of under \$500.

Mr. Leasor reported that printing and copying expenses for fiscal year 2016 were \$6,900 below the budgeted amount. He said the recommended budget for fiscal year 2017 remains at \$15,000.

Mr. Leasor said the amounts requested for advertising; staff development and training; and postage for fiscal year 2017 were carried over from fiscal year 2016 with no changes.

Mr. Leasor said legal and professional actual expenses were below the budgeted amount by about \$76,000. He said this was due to costs for the collection of delinquent accounts being lower than anticipated. In addition, there were no expenses for experts to provide legal testimony in fiscal year 2016. He said the amount requested for legal and professional expenses for fiscal year 2017 is \$230,000. He explained that this expense includes the cost for the services of the Assistant Attorney General, a hearing officer, the annual audit, Attorney General and Special Counsel fees related to the collection of delinquent accounts, experts to provide legal testimony as needed, database maintenance services, and other miscellaneous and professional services.

Mr. Leasor reported that traveling expenses were \$7,900 below the budgeted amount due to travel costs anticipated for the ongoing subrogation litigation not being incurred. He said the recommended budget for travel expenses for fiscal year 2017 is \$8,000.

Mr. Leasor stated employee expenses were \$3,400 below the budgeted amount due to staff vacancies. He stated the recommended employee expense for fiscal year 2017 is \$27,900. He explained the increase from the prior year is due to an increase in the monthly rate for employee parking.

Mr. Leasor said telephone expenses were \$3,800 above the budgeted amount. He said this was due to the installation of a faster data connection, which was necessary due to the transition from traditional landline phone services to the voice over internet protocol (VoIP) phone system. In addition, expenses related to the off-site data backup increased. He said the anticipated telephone expenses for fiscal year 2017 are \$13,900. He explained that this expense includes web access, website hosting, spam/virus filtering, and VoIP phone system. He explained that the budget increase was necessary due to the increased costs of additional internet bandwidth.

Mr. Leasor said the depreciation expense was below the budgeted amount by \$1,000, and the anticipated depreciation expense for fiscal year 2017 is \$12,000.

Mr. Leasor pointed out that overall, operating expenses were about \$318,000 below what was budgeted for fiscal year 2016. He stated the recommended fiscal year 2017 operating expense budget total is \$1,836,000. He noted this is a \$32,900 decrease from the 2016 operating expense budget.

Vice-Chairman Hull asked whether the projected tank revenue includes both the 2016 annual per-tank fees plus some anticipated recovery of prior years' fees. Mr. Leasor confirmed the estimate was built with the assumption of revenue from payment of the annual per-tank fees, prior years' fees as well as transfer fees.

Chairman Rocco pointed out that the budgeted operating and claims expenses exceed the expected income from tank fees. He explained that this deficit spending is being done intentionally in order to reduce the \$27 million of unobligated funds.

J.D. Pisula commented that there had been recent operational improvements within STAR Ohio, and the Board could take advantage of these changes by having interest earnings deposited directly into the STAR Ohio account rather than being swept into the Fidelity money market account and manually transferred to the STAR Ohio account.

Capital Budget

Chairman Rocco called upon Mr. Leasor to present the proposed capital budget for fiscal year 2017.

Mr. Leasor said the proposed capital budget behind Tab 5 includes the fiscal year 2015 actual expenditures, the budgeted amounts and annualized expenditures for fiscal year 2016, and the recommended budget for fiscal year 2017.

Mr. Leasor said furniture and equipment was budgeted at \$5,000 for fiscal year 2016, and the actual expenditure for this line item was \$2,227. He noted the costs incurred were for the replacement of furniture in the claims staff offices. He said the recommended furniture and equipment budget for fiscal year 2017 is \$5,000.

Mr. Leasor reported that data processing and electronics were budgeted at \$5,000 for fiscal year 2016, and the actual expenditures for this line item were \$4,437. He said these expenditures included the purchase of new computers and the installation of new data backup hardware. He said \$7,500 is recommended for data processing and electronics for fiscal year 2017. He noted the requested amount includes costs for the purchase of pre-packaged software with a cost above \$500 as well as replacement IT related equipment and computers as needed.

Vice-Chairman Hull asked whether the location, use and condition of the mobile treatment units the Board has purchased are being tracked, and whether there has been the anticipated cost savings from the equipment being reused at other locations. Chairman Rocco responded stating that the claims staff tracks the use of the equipment, but noted that recently there has been some concerns raised by the Executive Director that the units are not operating efficiently and the equipment isn't turning over as fast as originally anticipated. He said in some cases there is extensive downtime resulting in the length of the cleanup continuing far beyond the proposed schedule, and the costs for maintaining the equipment are becoming significantly high. He said in the future, the staff will monitor whether the equipment is functioning properly, and also collect information about operational and maintenance costs, life expectancy and how often equipment can be refurbished.

Chairman Rocco asked if there were any questions or comments concerning the proposed operating and capital budgets and there were none. He then requested a motion to approve the operating budget as proposed. Vice-Chairman Hull so moved. Mr. Geyer seconded. A vote was taken and all members voted in favor. The motion passed.

Chairman Rocco requested a motion to approve the capital budget as proposed. Vice-Chairman Hull so moved. Mr. Fleming seconded. A vote was taken and all members voted in favor. The motion passed.

Chairman Rocco requested a motion to obligate \$9 million for the payment of claims for fiscal year 2017. Vice-Chairman Hull so moved. Mr. Bryant seconded. A vote was taken and all members voted in favor. The motion passed.

Fee Statement Statistics

Mr. Leasor stated the 2016 program year fee statements were issued on April 28, 2016, and about \$9.6 million was invoiced to 3,377 owners of 21,101 USTs.

Mr. Leasor said, as of June 7, 2016, just under \$3.1 million, which represents 32% of the amount billed, had been collected in per-tank fees. He said collections for the same period last year were \$3.2 million. He noted this reflects a 4.2% decrease in comparison to the previous year, and is attributed to the timing of owner payments being received.

Mr. Leasor said between July 1, 2015, and June 7, 2016, about \$9.5 million was collected for 2015 program year fees and \$439,000, net of any refunds paid, was collected for prior years' fees.

Mr. Leasor said for the 2016 program year, 15,500 tanks were billed at the standard deductible (\$55,000) per-tank fee and about 5,600 tanks were billed at the reduced deductible (\$11,000) per-tank fee. Mr. Leasor said, as of June 7, 2016, the fees had been paid at the standard deductible rate for a little under 4,100 tanks and at the reduced deductible amount for 2,400 tanks. He said fees for a total of 6,488 tanks had been paid by 1,422 owners. He said this compares to fees being paid for 6,792 tanks by 1,510 owners for the same period of time in the prior year. He said the 6% reduction in the number of owners paying for the same period of time may be impacted by delayed mail delivery resulting from a staffing shortage at the local Post Office.

Mr. Leasor said for the 2015 program year, 3,234 owners have paid fees for 20,589 tanks. He indicated this amount would increase slightly by the end of the program year, June 30, 2016.

Mr. Leasor said the \$3.1 million collected to date represents 32% of the \$9.4 million budgeted for the 2016 program year. He said so far for program year 2016, fees had been received for 6,488 USTs, which is 32% of the 20,200 tanks budgeted.

Chairman Rocco asked whether owners can electronically submit their fee payments. Mr. Leasor responded stating that electronic transactions are not currently accepted. Chairman Rocco said tank owners would likely prefer to submit payments and file applications online. Mr. Pisula said there is a team within the Treasurer's Office available to assist state agencies with online payment transactions, and Mr. Stephenson recommended the staff look into using the Ohio Business Gateway filing and payment system. He noted that businesses already use this online gateway for the payment of a number of business taxes and other state services. Chairman Rocco said unless the costs to process online transactions are unreasonable, the Board ought to consider making the option available to tank owners.

Compliance and 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, 2016, refunds totaling \$88,765 had been paid to 86 owners for the 2015 program year. She said a total of \$56,600 was used to offset prior years' outstanding fees. She said the combined amounts total \$145,365, which represents 65% of the \$225,000 refund goal set for the 2015 program year. She reported the amount of refunds pending totals \$1,345,000.

Ms. Esquivel said, as of May 31, 2016, a net total of \$256,890 had been collected by the Attorney General's Office and Special Counsel.

Ms. Esquivel said since July 1, 2015, 321 accounts totaling \$1,124,050 had been certified to the Attorney General's Office for collection. She noted that no additional fees would be certified for collection until the 2016 program year.

Ms. Esquivel said four Orders Pursuant to Law and one Determination to Deny a Certificate of Coverage were under appeal. She said all appeals are under review.

Ms. Esquivel reported that three Ability to Pay Applications are pending 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 that Applications for Certificates of Coverage were mailed to 3,377 owners for program year 2015. She said 3,104 Certificates of Coverage had been issued thus far for program year 2015. She said there are 155 Applications for Certificates of Coverage currently in process.

Ms. Esquivel stated that there are 44 uncashed refund checks that total \$32,897. She said there is \$34,775 in refunds pending for 32 owners from whom more information has been requested.

Claims Reports:

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

Ms. Duann said, as of June 1, 2016, a total of 2,371 Fund eligible sites had received no further action status. She pointed out that 19% of these sites were cleaned up exclusively under BUSTR's risk based corrective action (RBCA) rules and had an average cleanup cost of about \$73,000 per site.

Ms. Duann reported that, as of June 1, 2016, a total of 1,553 claims with a total face value above the deductible amount were pending review. She noted that in general, claims are being reviewed within six months of receipt. She said for those tank owners that the Board has granted hardship status, the claims are being expedited, and are typically reviewed within 30 days of receipt.

Ms. Duann stated that, as of June 1, 2016, 14 claim settlement determinations were under appeal. She noted this was down from the 18 appeals that had been open in the month of March.

Ms. Duann reported that during the last 11 months, a total of 722 claims were received, and the staff settled or closed 721 claims in these months. She said an additional 30 claims were closed because the sites were issued no further action status, and the total claim value did not reach the deductible amount. She said she expects an additional 36 claims to be closed in the month of June for the same reason.

She said of the 721 claims settled, the total face value was \$11.4 million. She said approximately 21% of the total face value was disallowed for various reasons. She said the disallowed costs include costs that were not timely submitted, excessive costs, and costs associated with tank removal.

Ms. Duann stated that, as of June 1, 2016, the total claim settlement offer was \$7 million, and the total claim settlement offer for program year 2015 is anticipated to be \$7.5 million.

Ms. Duann said that during the last 11 months, 73 eligibility applications were received and 65 eligibility determinations were issued. She said approximately 41% of the eligibility applications were denied. She pointed out that 74% of the denials were due to no release being demonstrated or no corrective action work being required by BUSTR as a result of tank closure or suspected release investigation activity. She said one application was denied for late filing, two applications were denied for no valid Certificates of Coverage, and three applications were denied for the tank systems being out of compliance with the State Fire Marshal's rules.

Ms. Duann reported that during the last 11 months, a total of 148 requests for cost pre-approval had been received, and 160 cost pre-approval notifications were issued. She added that 28 cost pre-approval requests are currently pending review.

New Business:

Hearing Officer's Contract Renewal

Chairman Rocco called upon Ms. Richmond to discuss the contract for the Board's hearing officer, Howard Silver.

Ms. Richmond said Mr. Silver has agreed to extend his contract as the Board's hearing officer for the upcoming fiscal year of July 1, 2016 through June 30, 2017. She said the terms of the agreement are at the same hourly rate of \$110, which has not changed since 2002. She added that the contract gives a minimum of five hours for the contract period, and he is not bound to supply any more than 300 hours for the year. The contract also includes a maximum payment of \$2,500 per appeal, unless approved otherwise.

Director Richmond requested a motion to authorize the Chairman to enter into an agreement with Howard Silver for the continuation of hearing officer services for fiscal year 2017. Vice-Chairman Hull so moved. Mr. Stephenson seconded. Chairman Rocco asked if there were any questions or discussion concerning the contract, and there were none. A vote was taken and all members were in favor. The motion passed.

Assistant Attorney General Memorandum of Understanding

Chairman Rocco called upon Ms. Richmond to discuss the contract for the Assistant Attorney General's legal services.

Ms. Richmond said the Attorney General has agreed to allow for Jennifer Croskey to continue to provide legal services to the Board. She said as the Board's Assistant Attorney General, Ms. Croskey performs all litigation and counsel related tasks. She explained that the Board pays 75% of her salary and benefit costs plus a percentage for indirect costs related to support services such as telephone, supplies, office space, etc. She noted the contract includes a clause that if the actual costs will exceed the amount stipulated in the contract, the parties can renegotiate the contract.

Ms. Richmond requested a motion to authorize the chairman to enter into the agreement with the Attorney General's Office for the continuation of legal services in an amount not to exceed \$109,757 for fiscal year 2017. Vice-Chairman Hull so moved and Mr. Geyer seconded. Chairman Rocco asked

if there were any questions or discussion concerning the contract, and there were none. A vote was taken and all members were in favor. The motion passed.

Database Consultant Contract

Chairman Rocco called upon Ms. Richmond to discuss the database consultant contract.

Ms. Richmond said the Board's database is a customized software system used for many day to day functions including tracking owner accounts, processing claims and generating financial statements. She pointed out that in the past few years, there has been no consultant under contract to make changes or updates to the database. She said during the last annual fee statement process, there was an error in the software that prevented the fee statements from being created, and the original developer of the database was asked to come in to manually generate the fee statements. She said in order to address the problem, she recommended bringing the database developer back under a contract not to exceed \$15,000 to fix the fee statement process and to also address additional problems that had been identified as a result of the increasing size of the database.

Chairman Rocco asked if there were any questions concerning the recommendation, and there were none. He noted the \$15,000 amount was included in the legal and professional line item of the budget. He then requested a motion to authorize the chairman to enter into an agreement with Software Engineering LLC for various updates and fixes to the existing STARRS (Statistical Tank and Reimbursement Records System) database in an amount not to exceed \$15,000 for fiscal year 2017. Mr. Fleming so moved and Mr. Geyer seconded. A vote was taken and all members were in favor. The motion passed.

Personnel Compensation

Chairman Rocco stated that as a result of an agreement approved during the previous budget cycle, certain state employees would be given pay increases in the amount of 2.5% in the upcoming fiscal year. He pointed out that any adjustment to the salary of the Board's Executive Director, Starr Richmond, requires Board approval, and recommended to the Board that Ms. Richmond also be granted the pay increase. He then requested a motion to approve a 2.5% salary increase for Starr Richmond with an effective date of June 26, 2016. Vice-Chairman Hull so moved and Mr. Geyer seconded. After a brief discussion, Chairman Rocco clarified that the effective date was the beginning of the first pay period for fiscal year 2017, and is the date the salary increases for the other Board staff would become effective. A vote was taken and all members were in favor. The motion passed.

Subrogation Discussion

Claim # 18451-0268/02/17/14, Facility – Speedway Store #1219

Chairman Rocco called upon Jennifer Croskey, Assistant Attorney General, to discuss a subrogation claim.

Ms. Croskey stated that Speedway contracted with a company known as PSI (Professional Services Industries, Inc.) to perform work at a Speedway site in Brookville, Ohio. She said it is believed that while the contractor was performing work at the site, they caused a release of petroleum to occur, and the Board has subrogation rights in the matter. She noted she has been in contact with a member of Speedway's legal team in order to bring the parties together to discuss resolution of the claim. She then

requested the Board grant the Chairman and Executive Director the authority to negotiate and execute a settlement in the matter.

Following a brief discussion, Chairman Rocco clarified that the Board is becoming involved in the negotiations in order to recover the cleanup costs from the third party that is believed to have caused the release. He then requested a motion to authorize the Chairman and Executive Director in consultation with the Assistant Attorney General to negotiate and enter into a settlement agreement for the Board's subrogation claim against Professional Services Industry, Inc., for a release at the Speedway Site #1219 located at 799 Arlington Road, Brookville, Ohio. Vice-Chairman Hull so moved, and Mr. Geyer seconded. A vote was taken and the following members voted in the affirmative: Messrs. Bryant, Falconi, Geyer, Hills, Hull, Pisula, Rocco and Stephenson. Mr. Fleming abstained. The motion passed.

OPMCA Letter

Chairman Rocco stated that a letter from OPMCA (Ohio Petroleum Marketers and Convenience Store Association) had been distributed to each of the Board members. He said the letter concerns a decision by the Board to suspend the review and settlement of claim reimbursement applications when the Board has authorized the filing of a complaint in litigation against a responsible party.

Chairman Rocco said in its letter, OPMCA requested the Board reconsider the suspension policy because in many cases, ownership has transferred from the responsible party involved in the litigation to an unrelated new owner that is performing the necessary corrective action work on behalf of the responsible party. He explained that oftentimes sale contracts include contractual agreements whereby the new owner agrees to continue ongoing remediation at the site with the understanding the corrective action costs would be reimbursed from the Fund through a direct pay agreement.

Chairman Rocco said to better understand the issue, information regarding the number of sites and volume of claims affecting parties seeking reimbursement through direct pay agreements would be gathered, and he would meet with Vice-Chairman Hull, the Executive Director and legal counsel to explore options that would allow for subsequent owners of sites to continue cleanup and be reimbursed for the work.

Mr. Geyer said his recollection was that when the Board passed the motion authorizing the suspension of claims, the Board had also created a pathway forward for these third parties to be reimbursed through the execution of a written agreement stipulating that the payment of the claims would have no bearing on the pending litigation. Chairman Rocco said the execution of the agreement to waive certain rights and allow for payments to continue is at the option of the responsible party. He said this is not always the case, and if it does not occur, then these subsequent owners are ultimately bearing the brunt of the financial burden.

Chairman Rocco said he is concerned that if these parties cannot afford to continue corrective actions without being reimbursed, then cleanup at these sites may stop altogether. He added that there is also a risk that deadlines may be missed, which could put the sites out of compliance and prevent the ability to reimburse the necessary work. Mr. Geyer asked whether the responsible parties and subsequent parties had been informed that claim applications must continue to be timely filed even though the

claims are not currently being paid. Chairman Rocco said unfortunately because of the dozens of second and third-party owners involved with these properties, it is difficult to know whether all parties are aware of that or not.

Vice-Chairman Hull pointed out that the letter had just been received, and it would take some time to examine and analyze the ramifications of the issue. Mr. Hills stated he believes the Board should act to encourage corrective actions and not discourage it, and since monies are available, the Board ought to find an agreeable way to pay entities that are unrelated to the litigation for the cleanup work that they've completed. He added that the Board should be careful to not take steps that may have the unintended consequence of driving a party out of business because they aren't receiving reimbursement for cleanup costs they've incurred.

Mr. Stephenson said if an acceptable solution is found that allows for reimbursement to the third parties performing cleanup under assignment, then he requested that consideration be given to expedite the payment of any claims that have been in house and held from being processed. He pointed out that these claims are now being held an additional three months until the September meeting.

Following some further discussion, Chairman Rocco stated the intention is to bring an agreeable resolution to the Board at the September meeting and to contact him with any questions, concerns or suggestions regarding the issue.

Hardship Applications

Chairman Rocco called upon Ms. Richmond to present the hardship applications.

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 and 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 (U.S. 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 # 11387-0001/05/16/91, Owner – Washington & Lee Service Inc.

Ms. Richmond said Washington & Lee Service Inc. is the responsible party for a release that occurred in 1991 at 2080 Lee Road in Cleveland Heights, Ohio. She noted that Washington & Lee Service Inc. was dissolved in 2007. However, since that time David Saginor, one of the original incorporators, has continued the corrective actions at the site and is requesting the Board grant hardship status to him. She said this is his third request for hardship status, and to date, the Fund has reimbursed \$504,000. She noted there are currently no unsettled claims in house, and the estimated cost of corrective actions for the next year is \$50,000.

Ms. Richmond said all underground tanks were removed in June 1991 and the property was sold in October 2006. She said Mr. Saginor provided the financing for the new owner and the new owner makes a monthly payment to Mr. Saginor, which totals \$24,000 annually. She said based on information provided in the hardship application, his household income exceeds his annual living expenses by approximately \$22,000.

Ms. Richmond said based on his annual income less living expenses, the U.S. EPA financial capacity test estimates that Mr. Saginor could only afford corrective action costs of about \$28,000, and pointed out this is insufficient to pay for the corrective action costs expected to take place over the next year.

Ms. Richmond recommended the Board approve the application and grant hardship status to Mr. Saginor. Vice-Chairman Hull so moved and Mr. Fleming seconded.

Mr. Geyer clarified that by accepting the Director's recommendation to grant hardship status, the Board is simply allowing for claim submissions to be given priority over other in-house claims, so they can be reimbursed money quickly. He added that owners granted hardship status receive no more or less money than they would have received otherwise.

Chairman Rocco asked if there were any other discussion and there was none. A vote was taken and all members voted in the affirmative. The motion passed.

Claim # 13755-0001/05/24/91, Owner – Raymond Cooper d/b/a Cooper's Marathon

Ms. Richmond said that Raymond Cooper is the responsible person for a release that occurred in 1991 at 111 East Main Street in Lucas, Ohio, and this is his 12th request for hardship status. She said to date, the Fund has reimbursed about \$358,000 for corrective action costs for this release. She said there are no open claims in house, and the corrective action costs for the next 12 months are estimated to be \$95,000.

Ms. Richmond explained that Mr. Cooper is retired and no longer owns the property, but he is continuing the corrective actions. She said based on the information he provided in the hardship application, his household income is solely from pension and social security benefits, and it does exceed his living expenses slightly.

Ms. Richmond said that based on the U.S. EPA financial capacity test, Mr. Cooper could only afford corrective action costs of \$23,000.

Ms. Richmond said because the corrective action costs are expected to be \$95,000, she recommended the Board approve the application and grant hardship status to Mr. Cooper. Vice-Chairman Hull so moved and Mr. Bryant seconded. A vote was taken and all members voted in the affirmative. The motion passed.

Claim # 15303-0001/06/24/14, Owner – Rohr's Auto Service

Ms. Richmond said that Robert Rohr is the responsible person for a 2014 release at 112 First Street in Massillon, Ohio, and this is his second request for hardship status. She said to date, the Fund has reimbursed about \$21,400 for corrective action costs for this release. She said the cost of corrective action work expected to take place over the next 12 months is estimated to be \$50,000.

Ms. Richmond said that Mr. Rohr is retired, and his only source of income is social security benefits which total about \$20,000 a year. She said he closed his business in 2013, and sold a portion of the assets to pay his outstanding bills. She noted that he is trying to sell the property, but has been unable to sell it without a determination of no further action by the State Fire Marshal.

Ms. Richmond said that based on the U.S. EPA financial capacity test, Mr. Rohr does not have adequate cash flow or the ability to carry additional debt in order to pay the corrective action costs of \$50,000.

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

Claim # 17992-0001/06/30/06, Owner – Glouster Car Care

Ms. Richmond said that Glouster Car Care is the responsible party for a release at 43 South High Street in Glouster, Ohio that was discovered when the underground storage tanks were removed in June 2006. She said although the property was sold in February 2011, Patsy Brownell, the owner of Glouster Car Care, has continued the corrective actions at the site. This is her third request for hardship status.

Ms. Richmond said that to date, the Fund has reimbursed about \$80,000 for corrective actions at this release site, and one unsettled claim with a face value of \$14,000 is in house. She said that based on the information provided in the application, the anticipated corrective action costs for the next 12 months are \$15,000.

Ms. Richmond said that Mrs. Brownell is retired and receives about \$45,000 annually through social security and a pension. She said this amount slightly exceeds her reported living expenses.

Ms. Richmond said that based on the U.S. EPA financial capacity test, Mrs. Brownell does not have adequate cash flow or the ability to carry additional debt in order to pay corrective action costs.

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

Claim # 18344-0001/10/26/98, Owner – Red Stripe Associates, LLC

Ms. Richmond said Red Stripe Associates, LLC is the responsible party for a 1998 release that occurred on National Road in Saint Clairsville, Ohio. She said that as a member of the LLC, Gary Glessner submitted the application requesting the Board grant hardship status to Red Stripe Associates. She noted this was Red Stripe Associates' 15th request for hardship status.

Ms. Richmond stated that to date, the Fund has reimbursed over \$223,000 for corrective action costs for this release. She said although there are no claims currently pending review, a cost pre-approval request was received for a RAP (remedial action plan), and that RAP is estimated to cost \$164,000.

Ms. Richmond said the property and business were sold in November 2008, and Red Stripe Associates provided financing to the new owner. She said no additional funds are being generated by the corporation.

Ms. Richmond said that based on the U.S. EPA financial capacity test, and information submitted with the application, there is less than a 50% probability that Red Stripe Associates can afford \$164,000 in corrective action costs in the next year.

Ms. Richmond recommended the Board approve the application and grant hardship status to Red Stripe Associates, LLC. Vice-Chairman Hull so moved and Mr. Bryant seconded. A vote was taken and all members voted in the affirmative. The motion passed.

Claim # 19924-0001/05/06/14, Owner – P&W Properties, LLC d/b/a Route 22 Sunoco

Ms. Richmond said that P&W Properties, LLC is the responsible party for a 2013 release that occurred in Lancaster, Ohio. She said as the owners of P&W Properties, LLC, Donald and Cindy Husband are requesting the Board grant hardship status to the LLC. This is its second request for hardship status.

Ms. Richmond stated that to date, the Fund has reimbursed about \$18,000 for corrective action costs for this release, and there is one unsettled claim in house with a face value of \$5,200. She said the corrective action work expected to take place over the next 12 months is estimated to cost \$30,000.

Ms. Richmond said Mr. and Mrs. Husband are the only members of the LLC, and the only source of income for the LLC is rent payments from Route 22 Enterprises, LLC, which operates the business located on the property. She said that Route 22 Enterprises, LLC paid the deductible portion of the remediation costs and is paying the costs of the remediation.

Ms. Richmond said that based on the U.S. EPA financial capacity test, and information submitted with the application, there is less than a 50% probability that Route 22 Enterprises, LLC can afford \$30,000 in corrective action costs in the next year. She noted that \$30,000 exceeds Route 22 Enterprises, LLC reported taxable income for the five previous tax years.

Ms. Richmond said based the U.S. EPA financial model for corporations, known as ABEL, there is currently insufficient cash flow to self finance the anticipated corrective action costs. Ms. Richmond recommended the Board approve the application and grant hardship status to P&W Properties, LLC. Vice-Chairman Hull so moved and Mr. Hills seconded. A vote was taken and all members voted in the affirmative. The motion passed.

Certificates of Coverage – Ratifications:

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

Ms. Richmond said the lists behind Tabs 10 and 11 are listings of facilities that, since the March Board meeting, had been issued or denied a program year 2014 or 2015 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 has 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 identified, 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 if necessary, 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 2014 program year Certificates of Coverage for the two facilities included on the list behind Tab 10.

Vice-Chairman Hull moved to ratify the issuance of the 2014 Certificates of Coverage for the facilities listed. Mr. Pisula seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Richmond requested the Board ratify her actions with respect to the denial of the 2014 program year Certificates of Coverage for the six facilities included on the list behind the Tab 10 green divider page.

Vice-Chairman Hull moved to ratify the denial of the 2014 Certificates of Coverage that were listed. Mr. Fleming seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Richmond requested the Board ratify her actions with respect to the issuance of the 2015 program year Certificates of Coverage for the 63 owners of 74 facilities included on the list behind Tab 11.

Vice-Chairman Hull moved to ratify the issuance of the 2015 Certificates of Coverage for the facilities listed. Mr. Bryant seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Richmond requested the Board ratify her actions with respect to the denial of the 2015 program year Certificates of Coverage for the 53 owners of 60 facilities included on the list behind the Tab 11 green divider page.

Vice-Chairman Hull moved to ratify the denial of the 2015 Certificates of Coverage that were listed. Mr. Fleming seconded. A vote was taken and all members were in favor. The motion passed.

Executive Session:

Chairman Rocco requested a motion to enter into executive session with counsel pursuant to Ohio Revised Code 121.22(G)(3) to discuss matters of pending or imminent court action. Vice-Chairman Hull so moved. Mr. Geyer seconded. Chairman Rocco called for a roll call. The following members

voted in the affirmative: Messrs. Bryant, Falconi, Fleming, Geyer, Hills, Hull, Pisula, Stephenson and Rocco. There were no nays. The motion passed.

Reconvene Meeting

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

Chairman Rocco stated that during the executive session, he and Mr. Fleming requested to be recused from the executive session, and the meeting was turned over to Vice-Chairman Hull.

Confirm Next Meeting and Adjourn:

Chairman Rocco said that the next Board meeting will be held on Wednesday, September 7, 2016, at 10:00 a.m.

Vice-Chairman Hull made a motion to adjourn the meeting and Mr. Bryant seconded. All of the members were in favor.