



Petroleum Underground Storage Tank Release Compensation Board

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MINUTES OF THE 175th MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD June 13, 2018

BOARD MEMBERS IN ATTENDANCE

Jim Rocco
Steve Bergman
Scott Fleming
Stephen Hightower II
John Hull
Tom Stephenson

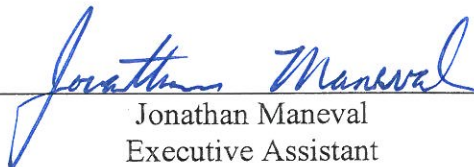
EX-OFFICIO MEMBERS IN ATTENDANCE

Verne Ord, representing Director Jacqueline Williams, Ohio Department of Commerce
Donna Waggener, representing Director Craig Butler, Ohio Environmental Protection Agency
Jeremy Rzepka, 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	Executive Assistant, PUSTRCB
Homayoun Sharifi	Claims Analyst, PUSTRCB
Cindy Knight	Senior Accounts Coordinator, PUSTRCB
John Hickey	Fiscal Specialist, PUSTRCB
Leigh Bayer	Assistant Attorney General
Howard Silver	Hearing Officer for the Board
Dan Adams	ATC Group Services LLC
Doug Darrah	ATC Group Services LLC
Jacqueline Caldwell	Krugliak, Wilkins, Griffiths & Dougherty, Co. L.P.A.
Sean Hetrick	BJAAM Environmental, Inc.
Matthew and Alicia Miller	Former UST Owners

Minutes submitted by:


Jonathan Maneval
Executive Assistant

Call to Order:

Chairman Rocco convened the one hundred seventy-fifth meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, June 13, 2018.

The following members were in attendance: Jim Rocco; Steve Bergman; Scott Fleming; Stephen Hightower II; John Hull; Tom Stephenson; Verne Ord, representing Director Jacqueline Williams, Ohio Department of Commerce; Donna Waggener, representing Director Craig Butler, Ohio Environmental Protection Agency; and Jeremy Rzepka, representing Josh Mandel, State Treasurer of Ohio.

The following members were not in attendance: Don Bryant and Mayor Ron Falconi.

Chairman Rocco welcomed Steve Bergman and Stephen Hightower II who Governor Kasich appointed to the Board as representatives of the interests of the public and businesses that own petroleum underground storage tanks (USTs), respectively. He noted that Donna Waggener had been appointed to serve as designee for Director Craig Butler, Ohio Environmental Protection Agency. He also pointed out that alternate designees Verne Ord representing Director Jacqueline Williams, Ohio Department of Commerce; and Jeremy Rzepka, representing Josh Mandel, State Treasurer of Ohio were in attendance.

Minutes:

Chairman Rocco asked if there were any comments or questions regarding the minutes from the March 21, 2018 Board meeting and there were none. Vice-Chairman Hull moved to approve the minutes. Mr. Stephenson seconded. A vote was taken and all members voted in the affirmative. The minutes were approved as presented.

BUSTR Report:

Chairman Rocco called upon Verne Ord, Assistant Bureau Chief, to present the Bureau of Underground Storage Tank Regulations' (BUSTR) report.

Mr. Ord reported that BUSTR received grant money through the U.S. Environmental Protection Agency (U.S. EPA) to identify the parties responsible for the investigation and cleanup of releases from petroleum USTs. He said the vendors contracted to perform the searches had completed their investigation of the 96 sites being researched for the program year.

Mr. Ord stated that BUSTR continues to work with the Ohio Development Services Agency, in partnership with the Ohio EPA, in administering the Abandoned Gas Station Cleanup Grant Program. The program provides grant funding to local governments and community improvement corporations to be used for the cleanup of abandoned gas station sites. He reported that so far 52 grants totaling about \$7 million had been awarded through the program.

Mr. Ord stated that BUSTR had been awarded \$1.935 million in LUST (leaking underground storage tank) grant monies for the upcoming fiscal year. He noted the grant was a \$40,000 increase over the previous year, but only one year of the two-year grant had been awarded. He said there is a lot of

uncertainty on Capitol Hill with the EPA Office of Underground Storage Tanks and the future of grant funding is unknown.

Mr. Ord reported that as of June 2, 2018, BUSTR had granted no further action status for nearly 30,200 petroleum release incidents throughout Ohio.

Mr. Ord shared that BUSTR had lost a long-time employee with the passing of Lynne Caughell earlier in the week. He noted that Ms. Caughell had worked for BUSTR since 1994 and it was a sad loss for the staff.

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 fiscal year 2018 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 2018 and also presents the recommended budget for fiscal year 2019.

Mr. Leasor reported tank revenue for fiscal year 2018 was budgeted at \$9.5 million, and actual revenues were \$190,000 above the budgeted amount. He recommended tank revenue for fiscal year 2019 be budgeted at \$8.45 million. He said this estimate was built on the assumption that fees will be received for 20,320 tanks, and 27% of these USTs will be assured at the reduced deductible. He noted that fees were invoiced for 20,824 USTs and historical data indicates fees for 97.5% of the tanks will be paid during the fiscal year. Vice-Chairman Hull questioned if the proposed budget for tank fee revenue reflects the decrease in the annual per-tank fees and Mr. Leasor confirmed that the recommended budget was built based upon per-tank fees of \$350 for the \$55,000 deductible and \$550 per tank for the \$11,000 deductible. He noted the budget also accounts for a slight decrease in the number of tanks paid from the previous year.

Mr. Leasor said tank fee revenue includes property transfer fees which are projected to be \$90,000 for fiscal year 2019. He said a portion of the transfer fees were assessed during the current fiscal year, but are anticipated to be collected in fiscal year 2019. He stated collection of prior years' fees, less anticipated fee refunds, are projected to be \$150,000 in fiscal year 2019.

Mr. Leasor stated interest income is \$80,000 above the budgeted amount for fiscal year 2018 due to the interest rate for STAR Ohio (State Treasury Asset Reserve of Ohio) being higher than anticipated. He explained that the estimate was built using a STAR Ohio interest rate of 1.5%, but the interest rate had risen to 1.9% by the end of May. In addition, certain U.S. Treasuries and U.S. Agency Callable Bonds matured in fiscal year 2018 and the principal was reinvested in like securities at higher rates.

He said the projected interest income for fiscal year 2019 is \$540,000. He said this anticipated interest income is based on an estimated \$265,000 earned on the \$16 million invested in U.S. Treasuries and U.S. Agency Callable Bonds plus approximately \$275,000 interest generated from funds in STAR Ohio with an estimated interest rate of 2.3%.

Mr. Leasor pointed out that miscellaneous income totaled \$9,900. He explained that \$9,392 of this income was from rental fees paid by a tank owner who had rented a dual phase extraction remediation system for which the Fund had reimbursed the purchase cost to perform cleanups at sites that were not Fund-eligible. He said other miscellaneous income was from payments for printing and copying requests, and cash rebates. He recommended that miscellaneous income be budgeted at \$1,000 for fiscal year 2019.

Mr. Leasor pointed out that actual total income was \$276,000 above the \$9.85 million amount budgeted for fiscal year 2018.

Mr. Leasor said the claims expense is anticipated to be \$7.6 million for fiscal year 2018. 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 2019 claims expense is \$9 million.

Mr. Leasor said the salary line item expense was \$270,000 below the amount budgeted for fiscal year 2018. Mr. Leasor explained that \$1.4 million had been budgeted. He explained that salary expenses were below budget because three positions were vacant until they were filled with permanent employees in the month of March. He noted that the actual fringe costs for employee health care were slightly lower than anticipated. He recommended the fiscal year 2019 budget for salaries be set at \$1.46 million. He said this amount reflects the expectation of maintaining parity with public employee union contracts, which provide for a 2.75% pay increase for the staff effective June 24, 2018. He said the budget also includes money to hire a replacement for an employee that will be retiring and allows for a period of time for training.

Mr. Leasor reported that actual temporary services expenses were above the budgeted amount by \$4,400. He explained that this was due to the use of two contract employees to fill the Office Assistant and Collections Specialist positions through the middle of January. He noted that all 16 positions are now filled with full time permanent employees. He recommended the 2019 budget for temporary services be \$20,000. He said temporary service employees are utilized for special projects, part-time legal services if needed as part of the ongoing litigation, and to fill potential short term staff vacancies.

Mr. Leasor said the actual rent expense for fiscal year 2018 was \$1,800 above the budgeted amount. He said this was due to some additional build out costs for the office space not covered under the rental agreement. He recommended the fiscal year 2019 budget for rent be set at \$156,000. He said the increase over the previous year reflects a potential 4% increase in operating costs.

Mr. Leasor reported that actual expenses for office supplies were about \$2,900 below the budgeted amount. He said the amount requested for fiscal year 2019 is \$20,000. He explained that this amount includes monies for standard office supplies, offsite storage, and pre-packaged software with a cost of under \$500.

Mr. Leasor reported that printing and copying expenses for fiscal year 2018 were \$4,400 below the budgeted amount. He said the recommended budget for fiscal year 2019 remains at \$15,000.

Mr. Leasor said legal and professional actual expenses were below the budgeted amount by \$21,500. He said this was due to costs for the collection of delinquent accounts being lower than anticipated. In addition, costs were not incurred for other professional services in fiscal year 2018. He said the amount requested for legal and professional expenses for fiscal year 2019 is \$240,000. 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, database maintenance services, the actuary review for the claims study, software licenses, and other miscellaneous professional services.

Mr. Leasor reported that traveling expenses were \$3,200 below the budgeted amount. He said about \$3,000 was budgeted for travel costs anticipated for the ongoing subrogation litigation. However, the actual costs were less than the estimate. He said the recommended budget for travel expenses for fiscal year 2019 is \$6,000.

Mr. Leasor stated that employee expenses were \$1,800 above the budgeted amount. He explained that these expenses were primarily for staff parking passes at the LeVeque Tower office location and the overage resulted from the move to the Executive Parkway location being delayed. He said the recommended budget for employee expense for fiscal year 2019 is \$1,000. He explained that the cost is for providing refreshments at Board meetings.

Mr. Leasor said telephone expenses were \$11,700 above the budgeted amount. He said the costs for the installation and setup of the internet connection and VoIP services for the Executive Parkway office location were significantly higher than anticipated. He said the anticipated telephone expenses for fiscal year 2019 are \$13,000. He noted that this expense includes web access, website hosting, spam/virus filtering, and the VoIP phone system.

Mr. Leasor reported that postage expenses were \$4,800 below the budgeted amount and the recommended budget for postage expenses for fiscal year 2019 is \$30,000.

Mr. Leasor said the depreciation expense was below the budgeted amount by \$4,400 and the anticipated depreciation expense for fiscal year 2019 is \$29,500. He said the increase over the previous year is expected as a result of anticipated purchases that would be discussed during his presentation of the capital budget.

Mr. Leasor pointed out that overall operating expenses were about \$292,000 below the amount budgeted for fiscal year 2018. He stated the recommended fiscal year 2019 operating expense budget total is \$1,991,500. He noted this is a \$23,900 increase from the 2018 operating expense budget.

Vice-Chairman Hull commented that the negative budget was planned with the intention of bringing down the cash reserves which currently include \$16 million invested in U.S. Treasuries and U.S. Agency Callable Bonds along with \$15 million in STAR Ohio. Chairman Rocco said that when the Board reduced the annual fees by \$50 per tank, it decreased the anticipated tank fee revenue by about \$1 million. Mr. Hightower asked why the fee was decreased and Chairman Rocco explained that the

concept of the Fund is to only generate revenues that are necessary to cover the claims for corrective action costs that are anticipated to be paid. He said that each year the Board reviews an analysis of the Fund's cash flow projections and liability estimates and determines what the fee should be for the upcoming program year. Vice-Chairman Hull commented that when the Fund was set up there were two bond issues which had covenants that required a certain amount of unobligated funds to be held in reserve. He said those bonds were paid off early and going forward, the intent is to spend against the reserves.

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

Capital Budget

Chairman Rocco called upon Mr. Leasor to present the proposed capital budget for fiscal year 2019.

Mr. Leasor said the proposed capital budget behind Tab 5 includes the fiscal year 2017 actual expenditures, the budgeted amounts and annualized expenditures for fiscal year 2018, and the recommended budget for fiscal year 2019.

Mr. Leasor said furniture and equipment was budgeted at \$45,000 for fiscal year 2018, and \$42,555 was spent on furniture for the new office space. He said the recommended furniture and equipment budget for fiscal year 2019 is \$5,000. Vice-Chairman Hull asked if the \$5,000 for furniture and equipment was for additional furniture to be purchased and Mr. Leasor explained that no additional furniture purchases are expected but the monies were budgeted in the event that furniture or equipment became damaged during the year and needed to be replaced.

Mr. Leasor reported that data processing and electronics were budgeted at \$35,000 for fiscal year 2018, and the actual expenditures for this line item were \$37,255. He said these expenditures included the purchase of a battery backup system, a blackberry device, a server rack, and a new server. He pointed out the line item was above the budgeted amount by \$2,255 due to the server cost being higher than expected. He noted the new server replaces four existing servers which have been in use since 2010. He said \$25,000 is recommended for data processing and electronics for fiscal year 2019. He noted the requested amount includes funds for the software and setup of the new server, for the purchase of pre-packaged software with a cost above \$500, and for the replacement of IT-related equipment if needed.

Mr. Leasor reported that the fiscal year 2018 total capital budget was set at \$80,000 and actual expenditures were \$79,810. Mr. Leasor recommended a total fiscal year 2019 capital budget of \$30,000.

Chairman Rocco asked if there were any questions or comments concerning the proposed capital budgets and there were none. He then requested a motion to approve the capital budget as proposed. Vice-Chairman Hull so moved. Mr. Hightower 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 2019. Vice-Chairman Hull so moved. Mr. Stephenson seconded. A vote was taken and all members voted in favor. The motion passed.

Fee Statement Statistics

Mr. Leasor stated the 2018 program year fee statements were issued on April 26, 2018, and about \$8.4 million was invoiced to 3,276 owners of 20,800 USTs.

Mr. Leasor said as of June 12, 2018, the per-tank fees collected were approximately \$3.6 million, which represents about 43% of the amount billed. He pointed out that collections for the same period in the previous year were about \$4 million. He noted that collections to date for the 2018 program year are 88.3% of the fees collected for the same period of time in the prior year. He pointed out that because the per-tank fees were reduced by \$50 or by 12.5% for the standard deductible, the reduction in fees skews the percentage in the year-to-year comparison.

Mr. Leasor said between July 1, 2017, and June 12, 2018, about \$9.4 million was collected for 2017 program year fees, and \$263,000 was collected for prior years' fees net of refunds paid.

Mr. Leasor reported for the 2018 program year, a total of 15,270 tanks were billed at the standard deductible (\$55,000) per-tank fee and about 5,560 tanks were billed at the reduced deductible (\$11,000) per-tank fee.

Mr. Leasor said as of June 12, 2018, fees had been paid at the standard deductible rate for a little under 6,000 tanks and at the reduced deductible amount for 2,700 tanks. He said, in total, fees had been paid for 8,653 tanks by 1,592 owners. He said this compares to fees being paid for 8,798 tanks by 1,638 owners for the same period of time in the prior year. He noted that in comparison to the previous year the number of tanks paid decreased by about 1.7%, and the number of owners that had paid decreased by 2.8%. He said the decreases could be attributed to decreases in both the number of tanks and owners billed from the previous year combined with the timing of payments received from a few midsize tank owners.

Mr. Leasor said for the 2017 program year, a total of 3,158 owners have paid fees for 20,429 tanks. He indicated this amount would increase slightly by June 30, 2018, when the 2017 program year ends.

Mr. Leasor said the \$3.6 million collected to date represents 42.4% of the \$8,450,000 budgeted for the 2018 program year. He said so far for program year 2018, fees had been received for 8,653 USTs, which is 42.6% of the 20,320 tanks budgeted.

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, 2018, refunds totaling \$31,368 had been paid to 30 owners for the 2017 program year. She said a total of \$14,745 was used to offset prior years' outstanding fees. She said the combined amounts total \$46,113, which represents 20% of the \$225,000 refund goal set

for the 2017 program year. She reported as of May 31, 2018, there are 2,549 pending refunds totaling \$1,346,094. She noted that the amount of pending refunds no longer includes uncashed refund checks or refunds for which owners have not responded to requests for more information. She pointed out that this change to the report resulted in 321 fewer refunds totaling \$95,000 than what was reported at the previous meeting.

Ms. Esquivel said as of May 31, 2018, the total collected by the Attorney General's Office and Special Counsel less the collection costs was \$123,842.

Ms. Esquivel said for the 2017 program year, 205 accounts totaling \$664,750 had been certified to the Attorney General's Office for collection. She said that this amount includes the unpaid 2017 program year's fees along with additional outstanding fees that had been identified through account reconciliations.

Ms. Esquivel said that one Order Pursuant to Law is currently under appeal and information to support that appeal is expected. She said that one Determination to Deny a Certificate of Coverage is currently under appeal for which a hearing was held on August 3, 2017.

Ms. Esquivel stated that two Ability to Pay Applications are currently 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 as of June 4, 2018, a total of 3,012 Certificates of Coverage have been issued for program year 2017. She said there are 102 Applications for Certificates of Coverage currently being processed, 36 unresolved Pending Denials, and 56 unresolved Determinations to Deny a Certificate of Coverage.

Ms. Esquivel stated that there are 47 uncashed refund checks totaling \$40,160. She said there are 11 owners with pending refunds totaling \$34,410 to whom letters have been sent notifying them that more information is needed before their refunds may be issued. She said there are 30 owners with pending refunds totaling \$57,320 for which information had been requested, but no responses have been received.

Claims Reports:

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

Ms. Duann said as of June 1, 2018, the total maximum liability of in-house open claims is just under \$30 million. She said that using the historical claim payout ratio of 75%, the actual anticipated claim liability of unpaid in-house claims is about \$22.5 million.

Ms. Duann reported that as of June 1, 2018, a total of 1,508 claims with a total face value above the deductible amount were pending review. She noted that claims received in the month of April are currently being reviewed and settled by the staff.

Ms. Duann stated that as of June 1, 2018, a total of 18 claim settlement determinations were under appeal. She noted that since the March Board meeting, four new claim settlement appeals were received, and three claim settlement appeals had been resolved.

Ms. Duann stated that in the month of May a record number of 87 claims were received. She reported that thus far this program year a total of 553 claims were received, and the staff settled or closed 645 claims in these months. She said that for the 11 months of this program year, the total claim settlement offer was \$6.9 million and the average per claim payout was about \$12,000. She pointed out that the average claim payout ratio is 81% of the net value and this is slightly higher than the previous year's average. She said the total claim settlement offer for program year 2017 is anticipated to be \$7.5 million.

Ms. Duann said that during the previous 11 months, 76 eligibility applications were received and 72 eligibility determinations were issued. She noted that of the 72 determinations, 35 were approved and 37 were denied. She said that 29 were denied for no release being demonstrated or no corrective action work being required by BUSTR. She said currently, 37 eligibility applications are pending review and six eligibility determinations are under appeal. She noted that since the March Board meeting one eligibility determination that was under appeal had been resolved.

Ms. Duann reported that during the past 11 months, a total of 112 requests for cost pre-approval had been received and 122 cost pre-approval notifications were issued. She added that 25 cost pre-approval requests are currently pending review. She said, with the exception of annual remedial action plan cost pre-approval requests, the number of requests for cost pre-approval has been decreasing.

Rules Committee Report:

Chairman Rocco stated that the Board's Rules Committee had been meeting and discussing a variety of changes to some of the Board's rules. He noted the proposed amendments were emailed to each member and were behind Tab 9 in the members' notebooks. He then called upon the Board's Executive Director, Starr Richmond, to present the proposed amendments to rules 3737-1-03, 3737-1-04, 3737-1-04.1, 3737-1-07, 3737-1-08, 3737-1-09, 3737-1-12, 3737-1-12.1, 3737-1-15, and 3737-1-19.

Ms. Richmond explained that the proposed changes are primarily being driven by amendments to the Fire Marshal's rules which became effective on September 1, 2017. She said the Fire Marshal has a definition for the term "confirmed release" and beginning in 2017, a confirmed release must be reported to the Fire Marshal. She explained that the term is being added to the Board's definition rule 3737-1-03 and noted that it has the same meaning as it does in the Fire Marshal's rule. She pointed out that the terms release, suspected release, and confirmed release are now defined, and the committee felt that rather than repeating all three terms throughout the Board's rules, it made sense to add a new term called "release incident" which could be used in place of the three terms. Chairman Rocco said that "release incident" is being defined as the earliest discovery of a release, suspected release, or confirmed release. He explained that the goal was to narrow down the three different types of release reporting dates to a single date, and noted that the earliest date would be used as the starting point for calculating eligibility and claim filing deadlines.

The following summarizes the proposed rule changes:

Rule 3737-1-03 Definitions.

The proposed amendment to the rule adds the term “confirmed release” as it is defined in the Fire Marshal’s rule 1301:7-9-13. The term “release incident” is also being added and means a “release,” “suspected release,” or “confirmed release” whichever is first discovered. In general, this new term will replace the existing phrase “suspected release or release, whichever is first” throughout the Board’s rules.

Rule 3737-1-04 Annual petroleum underground storage tank financial assurance fee, certification of compliance and financial responsibility.

The proposed amendment to paragraph (G)(2) will replace “petroleum release” with “release incident.”

Rule 3737-1-04.1 Coverage reinstatement.

The proposed amendment to paragraph (A)(2) will replace the language “Certify that, prior to payment, there has been no suspected release or release required to be reported to the fire marshal from the underground storage tank system...” with “Certify that, prior to payment, no release has been suspected or confirmed from the underground storage tank system...” The proposed amendment to paragraph (C) will replace the language “Nothing in any part of this rule shall be interpreted to allow retroactive coverage for suspected releases or releases required to be reported to the fire marshal...” with “Nothing in any part of this rule shall be interpreted to allow retroactive coverage for releases suspected or confirmed...” Both amendments are intended to provide additional clarification and make the rule easier to read.

Rule 3737-1-07 Establishing fund eligibility for corrective action costs.

The proposed amendments to paragraphs (A)(1), (A)(2), (A)(5)(a), and (A)(10) will replace the language “suspected release or release, whichever is first” with the new term “release incident.” Paragraph (A)(9) is being updated to include the “confirmed release” reporting requirement of the Fire Marshal’s rule 1301:7-9-13.

Rule 3737-1-08 Disbursement of the financial assurance fund.

The proposed amendments to paragraphs (D)(3) and (D)(4) will increase the hardship status approval period from one year to two years.

Rule 3737-1-09 Limitations of fund coverage.

The proposed amendment to paragraph (A)(2) will replace “suspected release or release” with “release.” The word “solely” is being removed from paragraphs (A)(5) and (A)(6).

Rule 3737-1-12 Application for reimbursement.

The proposed amendment to paragraph (D) will indicate that the one-year filing period applies to corrective actions performed under rule 1301:7-9-13 that was in effect between March 1, 2005, and August 31, 2017. The missing word “program” is being added to paragraph (D)(10). The proposed new paragraph (E) is identical to paragraph (D) except it indicates that the one-year filing period applies to corrective actions performed under rule 1301:7-9-13 that was effective on or after September 1, 2017, and the new term “release incident” is being used in paragraphs (E)(1) and (E)(2). Paragraphs

(F)(2) and (K)(1) are being amended to properly cite the applicable paragraphs of the rule. The amendment to paragraph (K)(2) is editorial in nature with the intent of making the text easier to read and understand.

Rule 3737-1-12.1 Mandatory and voluntary pre-approval of corrective action costs.

The proposed new paragraph (A)(6) requires the annual submission of an estimated cost and completion schedule for the corrective action costs associated with free product monitoring activities required by BUSTR's 2017 Technical Guidance Manual. Paragraph (B) is being amended to cite the applicable paragraphs of the rule as proposed.

Rule 3737-1-15 Modifying the deductible or the reduced deductible.

The proposed amendment to paragraph (C) will replace the language "suspected release or release, whichever is first" with the new term "release incident."

Rule 3737-1-19 Establishing fund eligibility for third party claims.

The proposed amendments to paragraphs (A)(2), (A)(3), and (A)(8) will replace the language "suspected release or release, whichever is first" with the new term "release incident." Paragraph (A)(7) is being updated to include the "confirmed release" reporting requirement of the Fire Marshal's rule 1301:7-9-13.

Chairman Rocco asked if there were any questions or discussion concerning the rule amendments that Ms. Richmond presented and there was none. Chairman Rocco requested a motion to approve the draft amendments to rules 3737-1-03, 3737-1-04, 3737-1-04.1, 3737-1-07, 3737-1-08, 3737-1-09, 3737-1-12, 3737-1-12.1, 3737-1-15, and 3737-1-19 and to file the proposed amended rules with the Joint Committee on Agency Rule Review, Legislative Service Commission, and the Secretary of State. Vice-Chairman Hull so moved. Ms. Waggener seconded. A vote was taken and all members were in favor. The motion passed.

Unfinished Business:

Matthew and Alicia Miller Administrative Appeals

Facility Number: 23812-0001, 522 Dover Road, Sugarcreek

Chairman Rocco stated that the administrative appeals filed by Matthew and Alicia Miller were on the agenda to be addressed by the Board. He said that although the appeals had been presented and discussed at previous meetings, he had asked the Board's hearing officer, Howard Silver, to present the cases and his Report and Recommendation again for the benefit of the new board members and ex-officio designees that were present. He then called upon Mr. Silver to summarize his findings and present his recommendation to the Board.

Mr. Silver stated that the appeals before the Board concern a consolidated proceeding involving two separate cases. He explained that the first case involves the denial of a Certificate of Coverage to Matthew and Alicia Miller and the second case involves the denial of a request for eligibility under the Financial Assurance Fund (Fund). He explained that the cases are related because in order to be granted eligibility under the Fund, the applicant must possess a valid Certificate of Coverage.

Mr. Silver said that the Millers purchased a property located in Sugarcreek, Ohio that had been operated as a Sunoco gas station for many years. He said the property had three UST systems located on it for dispensing gasoline, but the Millers had no interest in operating a fueling station and bought the property with the intention of opening a winery. He said that the Millers contacted the Board and discussed the process for transferring the Certificate of Coverage and after the sale of the property was completed, they submitted a Transfer of Ownership Form along with a \$500 check as payment of the transfer fee. He stated that after the form and transfer fee payment were received, the Board's Executive Director reviewed the items and in accordance with the Board's rules, on February 23, 2016, sent to the Millers a letter explaining that in order to secure a Certificate of Coverage, a certification that the tanks are in compliance with applicable State Fire Marshal rules and a statement of financial responsibility for the Fund deductible amount were needed. He said an application which provided the appropriate form to certify compliance with the State Fire Marshal's rules and for financial responsibility to be demonstrated was enclosed with the letter. He further explained that the notice cited the applicable laws and set a 30-day timeframe for which the documents needed to secure the coverage were to be provided. He said after the 30 days had passed without a response from the Millers, on April 5, 2016, the Board's Executive Director issued another letter stating that since the requested information had not been received, the Certificate of Coverage was denied. He said the Millers timely filed an appeal of the denial of the Certificate of Coverage.

Mr. Silver said the second case concerns an Application for Financial Assurance Fund Eligibility which the Millers filed in order to be determined eligible for the reimbursement of corrective action costs. He said that since the Millers had no interest in operating the gasoline service station, they had the tanks removed in March of 2016, and at that time, there was an indication of petroleum contamination above action levels. He said that Ms. Richmond, in her role as Director of the Financial Assurance Fund, sent a letter to the Millers denying their request for eligibility under the Fund. He said one reason for the denial was because the Millers did not have a Certificate of Coverage at the time the release was first suspected or confirmed. He said there was a second reason for the denial of eligibility which had to do with the date the tanks were last used. He said there was a conflict of facts presented at the hearing. He said the closure reported submitted with the eligibility application indicated the tanks were last used in January of 2015. However the Millers were in possession of an invoice from a gasoline wholesaler which indicated there was a delivery of gasoline to the station in August of 2015.

Mr. Silver explained that when tanks are taken out of service, there are certain actions that must be taken dependent upon if the tanks have been out of use for 30 days, 90 days, or one year. He said that the date the tanks were last used is significant because there is a lack of compliance if a permit was not obtained and certain actions were not taken dependent upon how long the tanks were out of use. He said that because he could not determine with any precision the last date the tanks were used, he did not recommend that eligibility be denied for lack of compliance. He did, however, recommend that eligibility under the Fund be denied because he was convinced that the Certificate of Coverage which is necessary for eligibility to be granted was appropriately denied for the reasons he previously stated.

Mr. Silver stated that his understanding of the Millers position is that even though they could not show the signature that was necessary to certify compliance with the State Fire Marshal's rules, or the form to demonstrate their financial ability to meet the deductible amount, or the proof that the completed

form requested by the Executive Director was provided within the 30 days as required, they had every intention of satisfying the law. He said that in his view when the laws passed by the general assembly require instances of conduct, it is not just motivation or intention that satisfy the requirements of the law. He said that based on the evidence in the hearing record, his opinion remains that the Millers simply did not do what was required by Ohio law and the rules passed by the Board; he therefore recommended that the Millers appeals be denied.

Chairman Rocco invited the Millers' counsel, Jacqueline Caldwell, to address the Board. Ms. Caldwell stated that the position of the Millers is that they complied with all three requirements necessary to obtain the Certificate of Coverage and that the actions they took show their plain intent to comply with the law. She explained that prior to and following the sale of the property, Mr. Miller contacted the Board and discussed the steps needed to obtain Fund coverage. She noted that the Board's communication logs reflect these conversations and indicate that Mr. Miller was directed to submit a Transfer of Ownership Form available on the Board's website, and to pay a \$500 transfer fee. She said that Mr. Miller testified at the hearing that when he signed the Transfer of Ownership Form, he believed he was in fact certifying the tanks were in compliance with the applicable rules of the State Fire Marshal. She said that Mr. Miller understood that he would need to demonstrate financial responsibility for the deductible amount, and he did this by obtaining a letter from his bank stating that the amount of funds available in his account. She stated that a mistake was made and this letter was sent to BUSTR (Bureau of Underground Storage Tank Regulations) and not to the Board. She noted that the Millers thought that BUSTR and the Board were different offices within the same agency. She said they truly believe they did comply with the law by submitting the Transfer of Ownership Form as directed, by obtaining the letter from their bank to demonstrate financial responsibility, and by paying the \$500 transfer fee. She said by taking these steps, their position is they satisfied the requirements to obtain a certificate.

Ms. Caldwell said that when the Millers received the correspondence requesting the Application for Certificate of Coverage, they did not read it carefully and at that point, had not sought legal counsel. She said they thought the information being requested in the letter was the same information that had already been mailed to the Board and thought perhaps it had not yet been received. She noted that a communication log from April of 2016 shows that Mr. Miller called the Board and on that day, stated that he believed he had submitted the necessary application along with the letter from his bank. She also said that Mr. Miller's testimony was that if he had known that there was an additional form that was required in order to certify the tanks were in compliance, he would have signed it. She pointed out that Mr. Miller was directed to a form on the Board's website during his conversations with the Board's staff and the Application for Certificate of Coverage is not available on the website.

Ms. Caldwell explained that following the appeal hearing, she found a 2016 Ohio Supreme Court decision concerning certification language which was referenced in the objections filed to the Report and Recommendation. She said that in their decision, the Supreme Court found that under certain circumstances, exact certification language is not necessary if the plain intent is to comply with the certification requirement. She said the Millers believe the verifiable facts show the Millers plain intent to comply and serve as an independent reason they are entitled to a Certificate of Coverage.

Ms. Caldwell commented that the Millers bought the property from an elderly gentleman in poor health and were not familiar with the rules and regulations concerning tank ownership. She stated that they registered the tanks and took every step they believed to be necessary to be in compliance with both BUSTR and the Board. She noted that since the Millers had no intention of operating the service station, they removed the tanks believing it to be the right thing to do for the community and for the environment. She said because they acted so quickly, the removal occurred before the Millers fully understood there were any deficiencies with the filing for the Certificate of Coverage. She noted that if they had waited two more weeks to remove the tanks, they could have corrected all errors and submitted the necessary information.

Ms. Caldwell said the Millers also sought insurance from a private insurer for the tanks and the application for the private insurance policy included specific certification language concerning compliance with the Fire Marshal's rules. She said that the certification on that application serves as additional objective evidence showing the Millers in fact certified the tanks were in compliance. She then restated that they believe the independently verified objective written evidence, including the Board's communication logs, the Transfer of Ownership Form, and the certification on the private insurance application form demonstrate the Millers took the steps to show their certification of compliance with the Fire Marshal's rules and also certification of financial responsibility.

Chairman Rocco asked the Board members if they had any questions and Mr. Hightower asked if the only barrier for the Millers opening the winery or moving forward with the property is the decision of the Board. Ms. Caldwell stated that she didn't know that for a fact but noted the Millers are currently trying to sell the property. She noted that the corrective action work has been halted with approved extensions from BUSTR until there is a decision by the Board. Chairman Rocco stated that the Board would deliberate privately to discuss the appeals.

Following the Board's deliberations, the public meeting resumed. Chairman Rocco explained that the Board had spent a considerable amount of time examining the record, listening to the testimony, and considering the facts in the case and they were ready to make a decision. He explained that the motion would be to either approve of the hearing officer's recommendation to uphold the denial of the Certificate of Coverage and the denial of eligibility under the Fund or it would be to disapprove the recommendation. Vice-Chairman Hull moved to accept the hearing officer's findings and recommendation to uphold the Director's determinations. Mr. Stephenson seconded. Vice-Chairman Hull commented that the Board had worked hard to find a way to assist the Millers in their endeavor, but based on the Board's rules and procedures they simply could not.

Chairman Rocco pointed out that the motion would be addressing both appeals and for purposes of the record, he felt it appropriate to restate the motion as he understood it. He said that the motion is to adopt the findings of facts, conclusions of law, and recommendation of the hearing officer that the April 5, 2016 Denial of a Certificate of Coverage and the May 5, 2017 Denial of Eligibility under the Petroleum Underground Storage Tank Financial Assurance Fund directed to Matthew and Alicia Miller comprises valid state action as a matter of fact and law and that they be upheld. He then called for a roll call. The following members voted in the affirmative: Ms. Waggener and Messrs. Fleming, Hightower, Hull, Ord, Rocco, and Stephenson. Messrs. Bergman and Rzepka abstained. The motion passed.

New Business:

Hearing Officer's Contract Renewal

Chairman Rocco said the contract for the Board's hearing officer, Howard Silver, was up for renewal. He said Mr. Silver has been the Board's hearing officer for many years and thanked him for the great work that he's done. He explained that Mr. Silver has agreed to extend his contract as the Board's hearing officer at the terms of the existing agreement. He then requested a motion to authorize the Chairman to enter into an agreement with Howard Silver for the continuation of hearing officer services for the period of July 1, 2018, through June 30, 2019. Mr. Fleming so moved and Vice-Chairman Hull seconded. He asked if there were any questions or discussion concerning the contract and there were none. A vote was taken and the motion passed.

Assistant Attorney General Memorandum of Understanding

Chairman Rocco said the agreement for the assistant attorney general is also up for renewal. He said the proposed contract is essentially the same as the previous contract with the only difference being the fee for the services being changed to \$94,365. He said that given the considerable amount of litigation going on, he believed the fee to be reasonable and 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 \$94,365 for fiscal year 2019. Vice-Chairman Hull so moved Mr. Fleming 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 known as STARRS (Statistical Tank and Reimbursement Records System) has been in operation since 2000 and each year the Board enters into a maintenance contract with the developer of the system for support services. She explained that the developer will write SQL queries in order to extract data out of the database and make changes such as an update that was needed to recognize the new corrective action rules that the Fire Marshal adopted in 2017. She said the contract is for an amount not to exceed \$15,000. Vice-Chairman Hull asked if the requested funding was sufficient and Ms. Richmond stated that the amount has been sufficient in the past. She noted that the system functions properly and only needs updates when there are processes such as rule changes that require it to be updated.

Vice-Chairman Hull asked if the database is sufficiently protected against hacking. Mr. Leasor responded explaining that there are multiple levels of security protection provided through WebForce, iPrism, and antivirus software. He said there are also multiple levels of password protection to prevent unauthorized access. Vice-Chairman Hull suggested that another consultant be brought in on a one-time basis to evaluate the security systems being used and to confirm whether the protection is up to date and adequate. Ms. Richmond commented that it would be a fitting time to assess the security systems since the new server and new software are being installed.

Chairman Rocco asked if there were any other questions and there were none. 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 database in an amount not to exceed \$15,000 for

fiscal year 2019. Vice-Chairman Hull so moved and Ms. Waggener seconded. A vote was taken and all members were in favor. The motion passed.

Personnel Compensation

Chairman Rocco stated that as discussed during Mr. Leasor's presentation of the salary budget for the upcoming fiscal year, there is a contract-related salary increase of 2.75% being given to state employees. He explained that any adjustment to the salary of the Board's Executive Director, Starr Richmond, requires Board approval. He commented that Ms. Richmond does outstanding work for the Board and he recommended that she be provided with the salary increase as well. He then requested a motion to approve a 2.75% salary increase for Starr Richmond with an effective date of June 24, 2018. Vice-Chairman Hull so moved and Mr. Stephenson seconded. A vote was taken and all members were in favor. The motion passed.

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. 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, Washington & Lee Service Inc.

Ms. Richmond said Washington & Lee Service Inc. is the responsible party for a release that was discovered at 2080 Lee Road in Cleveland Heights, Ohio. She noted that Washington & Lee Service Inc. was dissolved in 2007, but as the owner of the corporation, David Saginor is a responsible person and is requesting the Board grant hardship status to him.

Ms. Richmond explained that this is his fifth request for hardship status, and to date, the Fund has reimbursed \$570,000. She noted there are currently no unsettled claims in house and the estimated cost of corrective actions for the next year is \$125,000.

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 added that Mr. Saginor is still responsible for and has continued the corrective actions at the site.

Ms. Richmond said the U.S. EPA financial capacity test estimates that Mr. Saginor could only afford corrective action costs of just over \$32,000 based on his cash flow and debt capacity.

Ms. Richmond said that since the amount he could afford is insufficient to cover the estimated cost of corrective actions, she recommended the Board approve the application and grant hardship status to Mr. Saginor. Vice-Chairman Hull so moved and Mr. Ord seconded. A vote was taken and all members voted in the affirmative. The motion passed.

Claim # 13755-0001/05/24/91, Raymond Cooper

Ms. Richmond said that Raymond Cooper is the responsible person for a release that was discovered in 1991 at 111 East Main Street in Lucas, Ohio, and this is his 14th request for hardship status. She said to date, the Fund has reimbursed about \$393,000 for corrective action costs for the release, and the anticipated costs for corrective action activities for the next 12 months are estimated to be \$155,000.

Ms. Richmond explained that Mr. Cooper is retired and no longer owns the property, but he is continuing the corrective actions. She said that he and his wife have serious health issues, and based on his tax records and the information he provided in the hardship application, his household income is solely from pension and social security benefits. She said the combined income exceeds his living expenses by about \$11,000 annually.

Ms. Richmond said that based on the U.S. EPA financial capacity test, Mr. Cooper could only afford corrective action costs of \$12,000 based on his annual retirement income less living expenses.

Ms. Richmond said because the costs of the corrective action work in the next 12 months is estimated to be \$155,000, she recommended the Board approve the application and grant hardship status to Mr. Cooper. Vice-Chairman Hull so moved and Mr. Hightower 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 12 and 13 are listings of facilities that, since the March Board meeting, had been issued or denied a program year 2016 or 2017 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 2016 program year Certificates of Coverage for the six tanks located at two facilities included on the list behind Tab 12.

Vice-Chairman Hull moved to ratify the issuance of the 2016 Certificates of Coverage for the tanks 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 denial of the 2016 program year Certificates of Coverage for the tanks located at the five facilities included on the list behind the Tab 12 green divider page.

Vice-Chairman Hull moved to ratify the denial of the 2016 Certificates of Coverage for the tanks that were listed. Mr. Stephenson 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 2017 program year Certificates of Coverage for the 88 owners of 300 facilities included on the list behind Tab 13.

Vice-Chairman Hull moved to ratify the issuance of the 2017 Certificates of Coverage for the facilities 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 denial of the 2017 program year Certificates of Coverage for the 54 owners of 65 facilities included on the list behind the Tab 13 green divider page.

Vice-Chairman Hull moved to ratify the denial of the 2017 Certificates of Coverage for the tanks that were listed. Ms. Waggener 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 and Mr. Stephenson seconded. Chairman Rocco called for a roll call. The following members voted in the affirmative: Ms. Waggener and Messrs. Bergman, Fleming, Hightower, Hull, Ord, Rocco, Rzepka, and Stephenson. There were no nays. The motion passed.

Chairman Rocco asked if the discussion to be held in executive session concerned double-dipping litigation and Ms. Richmond confirmed that it did. He and Mr. Fleming requested to be recused from the executive session and the meeting was turned over to Vice-Chairman Hull.

Reconvene Meeting

The Board adjourned from executive session and reconvened the public meeting. As a point of order, Chairman Rocco noted that Mr. Fleming had left during the course of the executive session and was no longer present at the meeting.

Confirm Public Hearing and Next Meeting and Adjourn:

Chairman Rocco said there will be a public hearing on Wednesday, September 12, 2018, at 10:00 a.m. for the purpose of soliciting comments on the proposed rule amendments. The next Board meeting will commence immediately following the public hearing.

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