



# Petroleum Underground Storage Tank Release Compensation Board

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## MINUTES OF THE 124th MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD November 12, 2008

### BOARD MEMBERS IN ATTENDANCE

Jim Rocco  
John Hull  
Brian Epperson  
Cheryl Hilvert  
Tom Kmiec  
Don Kuchta  
Tom Stephenson

### EX-OFFICIO MEMBERS IN ATTENDANCE

George Horvath, representing the Ohio Department of Commerce  
Chris Geyer, representing the Ohio Environmental Protection Agency

### OTHERS IN ATTENDANCE

Starr Richmond	Executive Director, PUSTRCB
David Reeder	Assistant Director, PUSTRCB
Don Leasor	Chief Fiscal Officer, PUSTRCB
Ellen Mitton	Administrative Coordinator, PUSTRCB
Cindy Duann	Environmental Claims Supervisor, PUSTRCB
Mary Jo McKenzie	Claims Coordinator, PUSTRCB
Krista Nichols	Accounts Receivable Specialist, PUSTRCB
Jonathan Maneval	Accounts Receivable Analyst, PUSTRCB
Verne Ord	Assistant Bureau Chief, BUSTR
Cheryl Hawkinson	Assistant Attorney General
Howard Silver	Board Hearing Officer
Doug Darrah	ATC Associates
Sue Sprouse	ATC Associates
B. J. Reed	Speedway SuperAmerica
Adam Campbell	Speedway SuperAmerica
Mike Sawkiewicz	Environmental Compliance Services, Inc.

Minutes submitted by:

Ellen S. Mitton, Administrative Coordinator

### **Call To Order:**

Chairman Rocco convened the one hundred twenty-fourth meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, November 12, 2008, at 10:05 a.m. The following members were in attendance: Jim Rocco; John Hull; Brian Epperson; Tom Stephenson; Mayor Don Kuchta; Cheryl Hilvert; Tom Kmiec; George Horvath, representing Director Kimberly Zurz, Ohio Department of Commerce; and Chris Geyer, representing Director Chris Korleski, Ohio Environmental Protection Agency.

Chairman Rocco asked if there were any comments, questions, or discussions regarding the minutes from the September 10, 2008, board meeting and there were none. Mr. Hull moved to approve the minutes. Ms. Hilvert seconded the motion. A vote was taken and all members were in favor. The motion carried.

### **BUSTR Report:**

Chairman Rocco called upon Mr. George Horvath, Bureau Chief, BUSTR, to present the BUSTR report.

Mr. Horvath indicated he met with the Ohio Petroleum Contractors Association (OPCA) last week to respond to questions regarding BUSTR and the future direction of the agency. Mr. Horvath stated that there seems to be concern that BUSTR may be moving toward more enforcement. He said that as a result of the rules, increased inspections, and the need to resolve these issues, in some instances, additional enforcement action is being taken by the Attorney General's Office. Although not all cases may be referred, more are expected in the future. Mr. Horvath said he welcomes questions from OPCA, OPMCA, and the Board. He requested that any unanswered questions remaining from the OPCA meeting be forwarded to Jennifer Rhoads of the OPMCA and she will consolidate them before forwarding them to BUSTR.

Chairman Rocco added that at last week's meeting, Mr. Horvath, Steven Krichbaum, Fire Marshal Bell, and Code Enforcement Chief Wambo made presentations to OPCA on a wide range of issues. Mr. Krichbaum presented statistics on the ongoing compliance inspections. The top five compliance violations were identified, noting that financial responsibility is currently at the top of the list. A copy of the statistics Mr. Krichbaum presented will be forwarded to the Board members.

Mr. Horvath said that the BUSTR Rule Revision Advisory Committee, consisting of UST owners and/or operators and other interested parties in Ohio, is tentatively scheduled to meet February 15, 2009. The areas that need addressed are training, secondary containment, and delivery prohibition or "red tagging."

Mr. Horvath stated that additional funds from the U.S. Environmental Protection Agency (USEPA) for compliance inspections had been granted last fiscal year, and with those funds, BUSTR inspectors had completed 32% of the required inspections. He stated that BUSTR inspectors are on track to complete 3,100 operational compliance inspections this year. Mr. Horvath said 2,526 inspections had been completed with 5,459 inspections remaining over the next 22 months to meet the August 8, 2010 deadline.

Mr. Horvath said that there are currently 3,969 active tank owners representing 7,986 registered facilities and a total of 23,170 registered tanks. He said that BUSTR had a total of 3,161 active releases and a total of 1,135 active closures.

### **Financial Report:**

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

Mr. Leasor stated that auditors from Schneider Downs had been in-house since November 3, and would be here until November 14 preparing the 2008 audit. He stated that a copy of the final draft of the audit would be mailed to each Board member around the third week in December. He said this would allow for each member to read the report and get back with either Starr Richmond or himself with comments or questions prior to the audit being sent to the State Auditor by December 31, 2008. Mr. Leasor requested that the finance committee members review the draft in detail and provide comment. The auditors plan to present the audit report to the Board at the first meeting in January 2009.

Mr. Leasor stated that the August and September financials were mailed to each member. He asked if there were any questions or concerns to be discussed. Hearing none, he began his report with the September income figures.

He said that the current unobligated balance is just under \$11.5 million. Mr. Leasor said that there is an additional \$8.1 million remaining in the obligated account that is set aside for fiscal year 2009 claim settlement payments, and another \$6.9 million is in the debt service account.

He noted that the claims expense for September was approximately \$330,000. Mr. Leasor said that \$2.1 million had been paid for claims this fiscal year as of November 10, 2008.

Mr. Leasor said that the salary line item is a little higher than usual at this time; however, he stated this was due to accrued leave being paid-out to an employee who retired and one that resigned. Mr. Leasor noted that this item will correct itself as the year progresses. Mr. Leasor stated that with the exception of cyclical items such as postage, printing and copying, and the trustee expense, all other expense line items are on target for the end of the first quarter.

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

Mr. Leasor referenced the Fee Statement Statistics sheet and said to date there had been approximately \$13.9 million in tank fees collected, representing 96.5% of the \$14.7 million budgeted for the 2008 program year. He said that this amount represents 21,233 tanks paid by 3,382 owners. Mr. Leasor stated there was an additional approximate \$350,000 collected, net of refunds, in prior year fees to date.

Mr. Leasor stated that 73% of the tanks were paid at the standard deductible and 27% were paid at the reduced deductible and these figures fall in line with the Board's historical collection averages.

Chairman Rocco requested that the finance committee report be discussed at this time rather than later in the meeting. He stated that the finance committee met on November 3, 2008 and discussed fees for the 2009 program year. Chairman Rocco said that the committee reviewed proforma statements which included a review of income, expenses, and claims expenses going out five years; the committee also reviewed proforma statements with a fee increase versus no fee increase. He said that the Fund needs to maintain an annual claims payout of about \$8 to \$10 million. During the review, the committee noted that the bond payoff would be in August 2013. As part of the bond covenant, the Fund is required to maintain an unobligated balance of \$7.5 million and pledged revenues must exceed 135% of the debt service charges plus 100% of estimated annual expenses. Bond principal and interest payments are funded a year in advance so that at any time, there is one year's bond payment in the bank that cannot be used. Therefore, he requested that Mr. Leasor prepare proforma statements with the assumption that the bonds be paid in full in either July 2011 or July 2012 instead of 2013.

Chairman Rocco called on Mr. Leasor to explain the early payoff preliminary observations. Mr. Leasor stated that if the bonds were called in July 2012, the Fund would avoid approximately \$500,000 in interest payments.

He said that the claim payments funded for fiscal year 2012 could be increased to \$8 million due to the fact that in the following year, the Board would not have to comply with the bond covenant requiring that \$7.5 million be maintained in the unobligated fund. Mr. Leasor said using that scenario, the Board would be able to increase claim payments to \$9 million in fiscal year 2013.

Mr. Leasor said if the bonds were called in July 2011, the Fund would avoid approximately \$1.25 million in interest payments. He said if payment was made in 2011, the Board would need to decrease the claim payments being funded for fiscal years' 2010 and 2011 to \$8 million and \$7 million, respectively, to maintain a year-end balance of \$15 million in unobligated funds; \$15 million is the Fund's statutory financial soundness level. He said that in fiscal year 2013, the Board would be able to increase claims payments to \$9 million again.

Chairman Rocco indicated there would be an early termination penalty of \$3,000 and that the interest received would decrease by approximately \$300,000 as no interest would be earned from the Debt Service Fund after the bonds had been paid. The net result would be that the termination penalty would be far less than the interest payment reduction. He stated that both observations – paying the bonds off in July 2011 or in July 2012 – were viable options, but there would not be a decision made today.

Chairman Rocco said that the committee recommended to the Board that no fee increase or change in deductible amounts be implemented for program year 2009. Chairman Rocco recommended Board members contact Ms. Richmond for a copy of the Proforma Statements.

#### **Claims Report:**

Chairman Rocco called on Ms. Cindy Duann, Environmental Claims Supervisor, to present the claims report. Ms. Duann said that currently the total maximum liability of in-house open claims is approximately \$29.2 million. She said using the historical claim payout of 65 percent, the actual anticipated claim liability of unpaid claims is about \$19 million. Ms. Duann said that 1,701 sites had received an NFA and the average cleanup cost per NFA site is \$121,362. Ms. Duann said that in comparison, the 124 NFA sites cleaned up exclusively under BUSTR's 1999 and/or 2005 corrective action rules averaged only \$73,639 per site. She said of the 124 RBCA sites, only 67 sites had reached their deductible with an average cleanup cost per site of \$102,073.

Ms. Duann said there are currently 36 claims under appeal. She stated that many of these appeals have had settlement addendums sent and several appeals are awaiting more information from the tank owners.

Ms. Duann said that in the last four months, a monthly average of 73 claim packages had been received and the staff settled an average of 61 claims per month. She said that the average payout rate in this program year is at 68.5 percent. Ms. Duann said in October, 63 claims had been settled, with a higher claim payout rate of 82 percent. She stated that a record high 114 claim packages had been received in October. Ms. Duann stated that a lump sum settlement would be negotiated with a major oil company this program year involving 29 NFA sites for a total of 136 claim settlements.

Ms. Duann said the Board had received a total of 43 eligibility applications so far this program year, averaging 11 applications per month and an average of eight applications have been determined monthly. She stated that the eligibility approval rate is at 73 percent. Ms. Duann said that as of the beginning of October, Mr. Reeder had been reviewing the incoming eligibility applications to enable Ms. Duann to focus on claim settlements and appeals.

Ms. Duann said the Board had received 60 cost pre-approval applications and responded to a total of 81 applications during the first four months of this program year. Ms. Duann stated that requests for pre-approval are being reviewed within thirty to forty-five days.

## **New Business**

### ***Appeal***

Braceville Turnpike LTD, John Ridel, Manager, Facility #20567-0001

Mr. Howard Silver, Board Hearing Officer, presented his Report and Recommendation to the Board on the appeal of Braceville Turnpike LTD (Braceville) regarding the denial of a Certificate of Coverage (COC) for program year July 1, 2006 to June 30, 2007. He stated that the facility is located at 4322 State Route 5 in Newton Falls, Ohio.

Mr. Silver said that the ex parte record hearing was held on October 6, 2008, as no representative on behalf of Braceville appeared for or participated in the hearing. He noted that Braceville had received written notice on August 8, 2008, of the hearing scheduled for October 6, 2008; however, no communication had been received from Braceville as to attending the hearing.

Mr. Silver stated on February 7, 2007, a Notice of Pending Denial was directed to Braceville advising it that while the Fund had received the 2006 annual tank fees, the COC could not be issued for the underground storage tanks located at the facility. He stated that Braceville had been denied a COC upon review of the registration data obtained from BUSTR indicating the lack of overfill and spill prevention, no BUSTR registration, no submission of an 041 affidavit attesting that no release had been suspected or confirmed, and no leak detection records were submitted.

On March 6, 2007, Braceville resubmitted the 2006 Annual Fee Assessment Statement along with the 041 affidavit, BUSTR registration, and documents showing that the USTs had overfill and spill prevention. However, Braceville did not submit the required leak detection records and the monthly product inventory reconciliation. Based upon the fact that Braceville failed to provide all the required documents, the Director of the Fund issued a Notice of Determination to Deny Assurability on April 20, 2007.

Mr. Silver stated that the director's order to deny a Certificate of Coverage for the program year July 1, 2006 to June 30, 2007, comprises valid state action pursuant to Ohio Administrative Code 3737-1-04.1 and should be affirmed.

Mr. Horvath moved to uphold the hearing officer's findings of fact, conclusions of law, and recommendation. Mr. Geyer seconded. A vote was taken and all were in favor. The motion carried.

### ***Hardship Application***

Claim #18344-0001/10/26/98 Red Stripe Associates, Gary Glessner

Ms. Richmond said that the release site is 50708 National Road in St. Clairsville, Ohio. She said that this is the eighth request for hardship status submitted by Red Stripe Associates. Previous hardship applications expired in 2001, 2002, 2003, 2005, and 2006. Ms. Richmond stated that the sixth application was denied in September 2006 and a subsequent application was approved in November 2007. She said that to date, the Fund has reimbursed Red Stripe Associates almost \$135,000, and there is an additional \$20,500 pending payment.

Ms. Richmond said a US Environmental Protection Agency (EPA) financial capacity test was used to evaluate Red Stripe's cash flow and to determine its ability to carry debt. She said that based on the information provided in the hardship application and the financial capacity test, it was determined that Red Stripe is in a position to self finance these corrective action costs. Ms. Richmond recommended that the Board deny

hardship status to Red Stripe Associates. Mr. Stephenson moved to deny hardship status to Red Stripe Associates; Mr. Hull seconded. A vote was taken and all were in favor.

### ***Outstanding Fees***

Chairman Rocco stated that in the front of each Board member's book there was a listing of facilities with outstanding fees owed to the Board. He stated that he requested Ms. Richmond to prepare these statistics and he had been astounded at the amount of outstanding fees owed to the Fund. Chairman Rocco said the list is by county and gives the number of owners, number of facilities, outstanding per-tank fees, and the total outstanding, including late fees. He noted this was for informational purposes, but wanted the members to be aware that there is over \$5 million in outstanding annual fees and late fees split almost evenly between fees and penalties. Ms. Richmond said that to the best of her knowledge, the facilities on this list were still active facilities with tanks in the ground; it does not contain sites where tanks had been removed and fees were still owed to the Fund. Ms. Richmond said that she and the auditors were working together to develop new methodology to determine the fees that are uncollectible.

### ***Certificate of Coverage Ratification***

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

Ms. Richmond explained that behind Tab 8 there are two lists of owners. The first is a listing of owners who had been issued a program year 2007 Certificate of Coverage; and, behind the blue divider page, a listing of owners who had been denied a program year 2007 Certificate of Coverage. She said that behind Tab 9 there is a list of owners who had been issued a program year 2008 Certificate of Coverage; and, behind the blue divider page, a listing of owners who had been denied a program year 2008 Certificate of Coverage.

Ms. Richmond said that the process used to review the fee applications and issue or deny a Certificate of Coverage included a review for completeness to determine that full payment had been made, financial responsibility was demonstrated, and BUSTR registration was complete. In a second level of review, BUSTR registration data is considered to determine whether tanks for which coverage is sought are in compliance with BUSTR rules. Ms. Richmond said if there are no issues, the facility receives a Certificate of Coverage.

Ms. Richmond explained that if compliance issues are discovered, notice is provided to owners in accordance with Board rules and the Revised Code. Throughout this process the Board's staff works with owners to correct the fee statement record and/or the BUSTR registration record. She stated that the staff often continues to work with owners even after a determination to deny a Certificate of Coverage had been issued. The Board's rules and the Revised Code make provisions for an appeal of the determinations issued within this process.

Ms. Richmond asked that the Board ratify her actions with respect to the 40 facilities receiving 2007 Certificates of Coverage.

Mr. Hull moved to ratify the list of 2007 Certificates of Coverage that were granted. Mayor Kuchta seconded. A vote was taken and all were in favor. The motion passed.

Ms. Richmond stated that all of the processes as stated in the Board's rules and the Revised Code were followed in making the determinations for denying Certificates of Coverage. Ms. Richmond asked that the Board ratify her actions with respect to the 34 facilities that were denied a Certificate of Coverage for program year 2007.

Mr. Hull moved to ratify the list of 2007 Certificates of Coverage that were denied. Ms. Hilvert seconded. A vote was taken and all were in favor. The motion passed.

Ms. Richmond asked that the Board ratify her actions with respect to the 1,205 facilities receiving 2008 Certificates of Coverage.

Mr. Horvath moved to ratify the list of 2008 Certificates of Coverage that were granted. Mr. Hull seconded. A vote was taken and all were in favor. The motion passed.

Ms. Richmond asked that the Board ratify her actions with respect to the one facility that was denied a Certificate of Coverage for program year 2008.

Mr. Epperson moved to ratify the listing of the one facility that was denied a 2008 Certificate of Coverage. Mr. Geyer seconded. A vote was taken and all were in favor. The motion passed.

Chairman Rocco explained that at this point in time there are no immediate issues facing the Board regarding the rules process so it had been decided to forego any rule changes this year. He said that since the mandatory 5-Year Rule Review was scheduled for next year, the rule committee would wait until early 2009 to begin the rule review process; therefore, the tentative meeting scheduled for February 11, 2009, would not be necessary.

### **Executive Session**

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

Mr. Hull so moved. Mr. Epperson seconded and a roll call vote followed. The following members voted in the affirmative: Messrs. Rocco, Hull, Epperson, Horvath, Kmiec, Kuchta, Stephenson, Geyer, and Ms. Hilvert. There were no nays and the motion passed.

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

### **Confirm Next Meeting**

Mr. Hull made a motion to adjourn the meeting. Mr. Kmiec seconded. All were in favor. The next board meeting will be Wednesday, January 14, 2009, beginning at 10:00 a.m.