



Petroleum Underground Storage Tank Release Compensation Board

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MINUTES OF THE 144th MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD November 28, 2012

BOARD MEMBERS IN ATTENDANCE

Jim Rocco
John Hull
Brian Epperson
Steve Hightower
Don Kuchta

EX-OFFICIO MEMBERS IN ATTENDANCE

Bill Hills, representing Director David Goodman, Ohio Department of Commerce
Bill Bishilany, representing Josh Mandel, Treasurer, State of Ohio

OTHERS IN ATTENDANCE

Starr Richmond	Executive Director, PUSTRCB
Don Leasor	Chief Fiscal Officer, PUSTRCB
Madelin Esquivel	Assistant Director, PUSTRCB
Cindy Duann	Environmental Claims Supervisor, PUSTRCB
Ellen Mitton	Administrative Coordinator, PUSTRCB
Jonathan Maneval	Accounts Receivable Analyst, PUSTRCB
Nicole Waits	Account Examiner, PUSTRCB
Rick Trippel	Environmental Claims Analyst, PUSTRCB
Cheryl Hawkinson	Assistant Attorney General
Susan C. Walker	Assistant Attorney General
Will Latt	Speedway, LLC
Eric Swaisgood	Speedway, LLC
Christie Kuhlmann	Stantec
Doug Darrah	Cardno ATC
David Biemel	OPMCA
James A. Lowe	Special Counsel
Dennis Pantazis	Special Counsel
Jay Meglich	Schneider Downs
Erin Abbot	Schneider Downs

Minutes submitted by:

Ellen Mitton/Jonathan Maneval
Administrative Coordinator

Chairman Rocco convened the one hundred forty-fourth meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, November 28, 2012. The following members were in attendance: Jim Rocco; John Hull; Brian Epperson; Steve Hightower; Mayor Don Kuchta; Bill Hills, representing Director David Goodman, Ohio Department of Commerce; and, Bill Bishilany, representing Josh Mandel, Treasurer, State of Ohio.

Chairman Rocco noted that the Board is still awaiting confirmation from the Governor's office regarding the reappointments of Ms. Cheryl Hilvert and Mr. Tom Stephenson.

Chairman Rocco asked if there were any comments, questions, or discussion regarding the minutes from the September 19, 2012, board meeting and there were none. Mr. Hills moved to approve the minutes. Mr. Bishilany seconded. A vote was taken and all members voted in the affirmative. The motion carried.

BUSTR Report:

Chairman Rocco called upon Bill Hills, Bureau Chief, to present the BUSTR report.

Mr. Hills said BUSTR met all the requirements of the Domenici-Barton Energy Policy Act of 2005, also known as the Energy Policy Act, regarding UST-release prevention and training of owners and operators of UST systems.

Mr. Hills said BUSTR filed the final reports on March 31, 2012, regarding activities under the American Recovery and Reinvestment Act of 2009 (ARRA). He said the grant ended on May 14, 2012.

Mr. Hills said BUSTR continues to work on the OTTER database upgrade project. He said the project went "live" on April 30, 2012. He stated planning meetings, consisting of BUSTR management and the IT Division of the Department of Commerce, are being conducted to determine the necessary matters to be addressed in Phase 4 of the OTTER project. Mr. Hills stated he felt the BUSTR stakeholders were happy with this new on-line database.

Mr. Hills said BUSTR continues working on the click-scheduling project. He explained the click-scheduling project is a GPS driven computer program that geographically schedules the inspectors to visit facilities that are located in the same geographical area. Mr. Hills said computer tablets had been prepared and equipped with the necessary functions. He said Mr. Steven Krichbaum, Release Prevention Supervisor, is coordinating the process of formatting the whole program to allow for the centralized scheduling and application interface with OTTER.

Mr. Hills said the corrective action current grant cycle ends August 8, 2013. He said for the week ending November 9, 2012, there were 52 inspections conducted for a total of 7,488 completed inspections this grant cycle. Mr. Hills said BUSTR had a projected target of 5,929 inspections, indicating BUSTR is now 26% ahead of projections.

Mr. Hills stated 17 NFAs were generated for a total of 75 NFAs and the Bureau is on target for the grant cycle ending September 30, 2013.

Mr. Hills stated currently there are 3,769 owners of 7,582 registered facilities and 22,219 registered USTs. He said there had been a total of 27,181 NFAs related to clean-ups issued by the BUSTR program since its inception.

Financial Report:

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

Mr. Leasor stated a draft copy of the audited financial statements and supplementary financial information for the years ending June 30, 2012 and 2011 had been distributed to each member. He introduced Mr. Jay Meglich and Ms. Erin Abbot, representatives from the accounting firm of Schneider Downs. Mr. Meglich reiterated this is a draft of the financial statements; however, he did not anticipate any changes. Mr. Meglich stated this is the ninth audit of the Board's financial statements completed by Schneider Downs. He stated the Board's financial statements would be submitted to the Auditor of State prior to the December 31, 2012, deadline.

Mr. Meglich asked Ms. Abbot to present the draft of the financial statements to the Board. Ms. Abbot briefly explained the audit process. Ms. Abbot said that Schneider Downs would issue an unqualified opinion indicating the Board's financial statements are materially correct and present fairly the financial position of the Board as of June 30, 2012. Ms. Abbot stated the audit was conducted in accordance with Government Auditing Standards and did not identify any deficiencies in internal control over financial reporting that would be considered to be material weaknesses, or instances of non compliance with laws and regulations that would have a material effect on the financial statements.

Ms. Abbot pointed out that management's representation of the Board's financial performance during fiscal year 2012 is found in the Management's Discussion and Analysis section of the report. Ms. Abbot briefly discussed the Statements of Net Deficit and stated the Board's net assets are improving year after year and noted that current assets almost equal current liability indicating the strength of the Fund. Ms. Abbot went on to briefly discuss the Statements of Revenues, Expenses, and Change in Net Deficit and noted a change in the presentation of operating revenues with the recovery of bad debt reported separately from tank fees. This addressed an issue mentioned in a management letter in the prior year's audit. Ms. Abbot briefly discussed the Statements of Cash Flows and the Notes to the Financial Statements.

Mr. Meglich noted that management uses significant estimates in preparation of the financial statements in the reserve for unpaid claims and the allowance for doubtful accounts. Schneider Downs consulted with an actuary to assist in establishing a reasonable assessment of management's calculations of the reserve for unpaid claims. He said there were no adjustments proposed as a result of audit procedures. He reported there were no audit findings or significant issues related to the audit of the financial statements.

Chairman Rocco requested that each member take time to review the draft financial statements, and if there are questions or comments, to contact Ms. Richmond or Mr. Leasor before December 14, 2012.

July, August, September and October Financials

Mr. Leasor stated the July, August, September and October financials had been emailed to each member. He asked if there were any questions or concerns regarding these reports. Hearing none, Mr. Leasor began his report with the October financials.

Mr. Leasor said the current unobligated balance is approximately \$13.3 million. He said there is approximately \$5.4 million in the obligated account that is set aside for fiscal year 2013 claims' settlement payments.

Mr. Leasor stated that as of October 31 interest income is about 75% of the fiscal year 2013 budgeted amount. He said this is attributed primarily to the budget being created with an assumption of a .06% interest rate, but the interest rate is currently .10% at StarOhio.

Mr. Leasor said the October claims expense is approximately \$900,000 and as of November 27, a total of \$3.6 million has been paid for claim reimbursements this fiscal year.

Mr. Leasor said the operating expenses for October totaled just over \$122,000. He said as of October 31, the postage expense line item is at 68.92% of the amount budgeted, which includes postage fees for the final quarter of fiscal year 2012 that were paid in August. Mr. Leasor explained that the postage expenses included the mailing of the June 2012 newsletter, and the annual mailing of the fee assessment statements that are mailed via certified mail.

Mr. Leasor said all other expenses are on target for this time of the fiscal year.

Fee Statement Statistics

Mr. Leasor said as of November 27, 2012, the program year 2012 per tank fees collected were approximately \$13.5 million, which is 95% of the invoiced amount. He said \$330,293 in prior year fees had been collected from July 1, 2012 to date and this is net of refunds totaling \$65,670. He said between July 1, 2011 and November 27, 2012, approximately \$14.2 million had been collected for program year 2011 Fund fees. He said there had been \$563,600 collected in prior year fees net of any refunds.

He said for the 2012 program year, 16,108 USTs were billed at the standard deductible (\$55,000) and 5,645 USTs were billed at the reduced deductible (\$11,000). Mr. Leasor said as of November 27, 2012, the number of tanks paid at the standard deductible totals 15,055 and he said 5,573 USTs are paid at the reduced deductible. Mr. Leasor said as of this date, a total of 3,243 owners had paid program year 2012 per tank fees for 20,628 USTs. Mr. Leasor said these figures compare to 20,597 USTs paid by 3,279 owners for the same time period in program year 2011.

He said the 20,628 USTs paid for program year 2012 is 98.94% of the 20,850 tanks anticipated to be assured this year.

Vice Chairman Hull questioned why the number of tanks billed was fewer than the number of tanks reported by BUSTR. Chairman Rocco noted that BUSTR's number includes USTs storing non-petroleum hazardous substances. He said that all tanks identified as petroleum tanks by BUSTR should be in our database.

Compliance/Fee Assessment Report

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

Ms. Esquivel said the refund goal for program year 2012 had been set at \$275,000. She said so far in the 2012 program year, 86 fee refunds had been paid to 42 owners for a total of \$38,745. Ms. Esquivel said there are 3,467 pending refunds totaling \$1,547,194.

Ms. Esquivel explained that if an owner has outstanding fees and a refund has been identified, the refund is first used to offset the outstanding fees for that account and any remaining amount is then

paid to the owner. She said, to date, a total of \$21,594 had been used to offset outstanding Fund fees this program year.

Ms. Esquivel said there had been \$132,805 collected by the Attorney General's Office and Special Counsel so far this fiscal year. She said after deducting the collection costs of \$34,945, the net amount received by the Board totaled \$97,860. Ms. Esquivel said 54 accounts for a total of \$620,285 had been certified for collection to the Attorney General's office in October 2012.

Ms. Esquivel said there are eight Orders Pursuant to Law currently in appeal status – seven are under review and a settlement agreement is pending for one. She said there are two Determinations to Deny a Certificate of Coverage currently under appeal. She said four Ability to Pay Applications are under review. This program allows former UST owners experiencing financial difficulty to apply for and receive a determination of their ability to pay delinquent fees.

Ms. Esquivel said 3,538 fee statements had been mailed for program year 2012. She said as of October 31, 2012, a total of 2,988 owners were issued Certificates of Coverage for the 2012 program year.

Ms. Esquivel said currently 302 owners' applications are still being processed; and, there are 54 pending denials and five unresolved determinations to deny a certificate pending for this program year.

Ms. Esquivel said there are 14 owners on the unclaimed monies list who had been issued a refund check but for unknown reasons, the check had not been cashed. This amount totals \$4,625. She said there are an additional 69 owners on the unclaimed monies list with pending refunds totaling \$73,520. These owners' files have been reconciled and the staff is waiting for information that would verify the amount of the refund, if any, due to an owner.

She said the unclaimed monies list is available on the Board's website at www.petroboard.org.

Claims Report:

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

Ms. Duann said the current total maximum liability of in-house open claims is approximately \$26.3 million. Ms. Duann said in the past three years, the average claim payout ratio is slightly more than the historical 70%; therefore, the actual anticipated claim liability of unpaid in-house claims is about \$19 million. She reported that a total of 2,068 Fund eligible sites had been issued NFAs with an average cleanup cost of \$126,887 per site. Ms. Duann said currently there are 1,694 open claims pending review; and, 19 claims are under appeal.

Ms. Duann said that during the first four months of the 2012 program year, 223 claim applications had been received and 258 claims had been either settled or closed with a total claim settlement offer of \$3.28 million. Ms. Duann said approximately 81% of the claims settled had been received from major oil companies.

Ms. Duann said that the staff is currently in the process of developing a reasonable cost database for drilling activities. She said the staff is reviewing previously settled claims and extracting pertinent information regarding drilling costs for monitoring wells. She stated that in the past, the monitoring wells were typically installed by drilling subcontractors at very competitive prices. Ms. Duann said it appears that more consultants have their own drilling equipment and their costs are not as competitive.

Ms. Duann said during the past four months, 25 eligibility applications were received and 24 determinations of eligibility were issued. She stated 15 of the eligibility applications had been approved and nine had been denied. Ms. Duann said there are currently 14 eligibility applications pending review.

Ms. Duann said that during the first four months of program year 2012, there were 55 requests for cost pre-approval and 70 cost pre-approvals had been reviewed and notifications issued. She said there are currently 75 open cost pre-approvals pending review.

New Business

Finance Committee Report

Chairman Rocco said the Finance Committee met prior to today's Board meeting to discuss the Fund fees, which are reviewed on an annual basis to decide whether changes are needed in the fee structure. Chairman Rocco stated that for the first time the Fund is in a position where sufficient revenue is being received on an annual basis to fully offset annual costs. He stated the committee discussed reducing the deductible or fees, but after taking a look at the projected financial statements, the committee recommends leaving the fees as they are for one more year. Vice Chairman Hull stated that the committee also talked about other opportunities to accelerate claims review through the use of technology or some type of incentive to increase the quality of claims being submitted so that the amount of claim payments may be accelerated in coming years. He said that if more claims can be paid at a faster rate, then additional funding may be needed.

Chairman Rocco requested a motion to accept the Finance Committee's recommendation that the Board not increase tank fees or change deductible amounts for program year 2013. Mayor Kuchta so moved. Mr. Bishilany seconded. A vote was taken and all members voted in the affirmative.

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 a hardship allows for the acceleration of the review of claims submitted by the owner. Ms. Richmond said this 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. Ms. Richmond said at that time, the owner may reapply and submit updated financial information and be considered for a one year extension of hardship status.

Ms. Richmond stated in determining hardship status, the application and a minimum of two years 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.

Ms. Richmond stated there are two applications for hardship status being presented today.

Claim #4808-0001/02/02/90, Owner – Harold Saurers, Wooster Ignition, Inc.

Ms. Richmond stated that as sole owner of Wooster Ignition Inc., Mr. Saurers is requesting hardship status for his company. She said Wooster Ignition is responsible for a release that was discovered in February 1990 when an underground storage tank was removed from 1020 ½ Spruce Street in Wooster, Ohio. This is Wooster Ignition's second request for hardship status. Ms. Richmond said to

date, the Fund has reimbursed Wooster Ignition over \$42,000 and an additional \$16,400 is pending payment. Ms. Richmond said corrective action costs for the next 12 months are estimated at \$15,000.

Ms. Richmond stated that in calendar year 2011, Wooster Ignition had gross sales of just over \$44,000 and a net income of \$5,000. She said the retained earnings balance was approximately \$17,000 at the end of the year. Ms. Richmond said using the anticipated \$15,000 in corrective action costs, the USEPA financial capacity test estimates a less than 50% probability that Wooster Ignition Inc. can currently afford this amount and a 70% probability that it can afford \$9,000 over the next five years. She said given the costs of corrective action are expected to exceed this \$9,000 in just one year, these costs will continue in subsequent years, and the limited income generated by Wooster Ignition on an annual basis, she recommends the Board approve the application and grant hardship status to Wooster Ignition.

Mayor Kuchta moved to approve the hardship application. Mr. Epperson seconded and a vote was taken. All members voted in the affirmative. The motion carried.

Claim #13755-0001/05/24/91 Owner – Raymond Cooper dba Cooper Marathon

Ms. Richmond said this is the ninth application for hardship status submitted by Mr. Raymond Cooper who is the responsible person for a 1990 release that occurred at 111 East Main Street in Lucas, Ohio. To date, the Fund has reimbursed him slightly over \$294,000. She said that Mr. Cooper currently has one claim pending review for approximately \$24,000. A request for cost preapproval is pending review and anticipated corrective action costs total approximately \$168,000.

Ms. Richmond said Mr. Cooper is retired and no longer owns the property at 111 East Main Street in Lucas. She said based upon the information provided by Mr. Cooper in the hardship application, his household income is solely from pension and social security benefits and his reported income exceeds his annual living expenses by approximately \$30,000. Ms. Richmond said a review of the hardship application and the results of the U.S. EPA financial capacity test indicate Mr. Cooper would have the ability to finance a portion of the corrective action costs.

Ms. Richmond recommended that the Board approve this application and grant hardship status to Mr. Cooper on the basis that Mr. Cooper's only income is from his pension and social security and the anticipated corrective action costs in the next year far exceed his net income. She also said both Mr. Cooper and his wife have significant health-related issues.

Mr. Hull moved to approve the hardship application. Mr. Hightower seconded and a vote was taken. All members voted in the affirmative. The motion carried.

Old Business

Certificates 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 said that behind Tabs 9 and 10 are listings of facilities that, since the September Board meeting, had been issued or denied a program year 2011 or 2012 Certificate of Coverage.

Ms. Richmond said that 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 has been received; financial responsibility for the deductible has been demonstrated; and, the owner has certified with his signature

that he is in compliance with the State Fire Marshal's rules for the operation and maintenance of petroleum underground storage tanks. She said if these requirements are met and if the tanks existed in previous years, a certificate for the subject tanks had been issued to the owner in at least one of the prior two years, then a Certificate of Coverage is issued.

Ms. Richmond explained that if deficiencies or compliance issues are discovered, notice is provided to the owner in accordance with the Board's rules. The owner is provided 30 days to respond to the notice with information to correct the deficiency or compliance issue. If correcting information is not received within this time, a determination denying the Certificate of Coverage is issued to the owner.

She said the Board's rules and the Revised Code make provisions for an appeal of the determination. Ms. Richmond said that throughout this process the Board's staff works with the owner to correct the fee statement record and/or refers the owner to BUSTR to correct the registration record.

Ms. Richmond asked the Board to ratify her actions with respect to the issuance of the 2011 Certificates of Coverage for the eight facilities included on the list behind Tab 9.

Mr. Hightower moved to ratify the list of 2011 Certificates of Coverage that were granted. Mr. Hull seconded. A vote was taken and all of the members were in favor. The motion passed.

Ms. Richmond asked the Board to ratify her actions with respect to the denial of the 2011 program year Certificates of Coverage for the seven facilities included on the list behind the Tab 9 blue divider page.

Mr. Epperson moved to ratify the list of 2011 Certificates of Coverage that were denied. Mr. Hills seconded. A vote was taken and all of the members were in favor. The motion passed.

Ms. Richmond asked the Board to ratify her actions with respect to the issuance of the 2012 program year Certificates of Coverage for the 201 owners of 530 facilities included on the list behind Tab 10.

Mr. Epperson moved to ratify the list of 2012 Certificates of Coverage that were granted. Mr. Hull seconded. A vote was taken and all of the members were in favor. The motion passed.

Ms. Richmond asked the Board to ratify her actions with respect to the denial of the 2012 program year Certificates of Coverage for the four facilities included on the list behind the Tab 10 blue divider page.

Mr. Hull moved to ratify the list of 2012 Certificates of Coverage that were denied. Mr. Epperson seconded. A vote was taken and all of the members were in favor. The motion passed.

Modification of Memorandum of Understanding with Assistant Attorney General

Chairman Rocco requested a motion to authorize the Chairman to negotiate an amendment to the July 1, 2012, Memorandum of Understanding (MOU) with the Attorney General to provide for the continuation of the services specified in the MOU by a designated assistant attorney general other than that named in the MOU. He said all other terms, conditions, and covenants would remain the same. Mr. Hull so moved. Mr. Hills seconded and a vote was taken. All of the members were in favor. The motion passed.

Executive Session

Chairman Rocco requested a motion to go into executive session pursuant to O.R.C. 121.22(G)(3) to discuss matters of pending or imminent court action. Mr. Bishilany so moved. Mr. Hull seconded. Assistant Attorney General Cheryl Hawkinson stated the words “with counsel” must be included in the request to go into executive session. Mr. Bishilany withdrew his original motion and Mr. Hightower seconded the withdrawal.

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

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

Reconvene Meeting

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

Confirm Next Meeting

Mayor Kuchta made a motion to adjourn the meeting and Mr. Bishilany seconded. All were in favor. The next board meeting will be Wednesday, January 9, 2013.