

**MINUTES OF THE 133rd MEETING OF THE  
PETROLEUM UNDERGROUND STORAGE TANK  
RELEASE COMPENSATION BOARD  
September 8, 2010**

**BOARD MEMBERS IN ATTENDANCE**

Jim Rocco  
John Hull  
Duane Cable  
Brian Epperson  
Steve Hightower  
Cheryl Hilvert  
Don Kuchta  
Tom Kmiec  
Tom Stephenson

**EX-OFFICIO MEMBERS IN ATTENDANCE**

Andy Thompson, representing Director Kimberly Zurz, Ohio Department of Commerce  
Kyana Pierson, representing Kevin L. Boyce, Ohio Treasurer of State  
Chris Geyer, representing Director Chris Korleski, Ohio Environmental Protection Agency

**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
Nicole Johnson	Assurability Coordinator, PUSTRCB
Rick Trippel	Environmental Claims Analyst, PUSTRCB
Cheryl Hawkinson	Assistant Attorney General
Daniel Griest	Speedway SuperAmerica
Eric Swaisgood	Speedway SuperAmerica
Christina Polesovsky	OPMCA
Justin Riccofee	OPMCA
Doug Darrah	ATC Associates
Jodi Handlin	BJAAM Environmental

Minutes submitted by:

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Ellen S. Mitton  
Administrative Coordinator

### **Call To Order:**

Chairman Rocco convened the one hundred thirty-third meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, September 8, 2010. The following members were in attendance: Jim Rocco; John Hull; Cheryl Hilvert; Steve Hightower; Duane Cable; Mayor Don Kuchta; Brian Epperson; Tom Stephenson; Tom Kmiec; Andy Thompson, representing Director Kimberly Zurz, Ohio Department of Commerce; Christopher Geyer, representing Director Chris Korleski, Ohio Environmental Protection Agency; and, Kyana Pierson, representing Kevin Boyce, Ohio Treasurer of State.

Chairman Rocco welcomed Andy Thompson, Chief, Bureau of Underground Storage Tank Regulations (BUSTR).

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

### ***Election of Officers and Committee Member Appointments***

Chairman Rocco entertained motions from the floor for nominations of officers for the upcoming year. Mayor Kuchta moved to re-elect both Chairman Rocco and Vice Chairman Hull in their respective offices. Mr. Thompson seconded. A vote was taken and all members were in favor.

### ***Finance Committee***

Chairman Rocco stated that the Finance Committee consists of the Chairman, the Vice Chairman and one other Board member. Chairman Rocco asked Tom Stephenson to remain on the Finance Committee and he agreed. The Finance Committee members are Chairman Rocco, Vice Chairman Hull, and Mr. Stephenson.

### ***Rules Committee***

Chairman Rocco asked for Board members to volunteer to participate on the Rules Committee for the next year. Brian Epperson, Mayor Don Kuchta, and Chris Geyer volunteered to remain on the committee. Chairman Rocco and Vice Chairman Hull will work on the committee in an ad hoc capacity.

### ***2011 Meeting Dates***

Chairman Rocco set the following 2011 meeting dates: January 19, February 16 (tentative), March 9, June 8, September 14, and November 9. All meetings begin at 10:00 a.m.

### **BUSTR Report:**

Chairman Rocco called upon Andy Thompson, Bureau Chief, to present the BUSTR report.

Mr. Thompson said BUSTR continues to work with the U.S. EPA for final site selection to assess and cleanup contamination from abandoned tanks in Ohio utilizing monies made available through the American Recovery and Revitalization Act (ARRA). Mr. Thompson said there had been 32 sites selected and BUSTR met the \$1.2 million milestone at the end of August, which ensures that the remainder of the approximate \$8 million grant would be provided to the Department of Commerce. He said some of the sites are beginning to move into the remediation stage.

Mr. Thompson noted that in addition to the inspections, the BUSTR administrative rules are being reviewed as required by the five-year rule review, while concurrently drafting new rules to conform to the requirements of the Energy Act of 2005. Noting the rule review process, he said the Report on Petitions was published in August for rules addressing secondary containment and prohibition on delivery of petroleum products to UST systems in violation of the regulations. Mr. Thompson said there had been 49 comments to the Report on Petitions; 25 of which were unique.

In response to Chairman Rocco's question regarding the rules going through the five-year review process, Mr. Thompson stated that BUSTR had been granted a six-month extension by the Joint Committee on Agency Rule Review (JCARR). He noted the rules would be filed with JCARR by February 24, 2011.

Mr. Thompson said BUSTR had completed one of the requirements of the Energy Act, which mandated the on-site inspection of each underground storage tank (UST) in Ohio every three years. He said the first cycle of inspections were completed about a month ahead of schedule and BUSTR inspectors had begun the second cycle of inspections.

Mr. Thompson said BUSTR plans to increase the enforcement staff of four by hiring two enforcement coordinators who will assist the environmental section; an attorney will be devoted to the enforcement section, although available for other BUSTR work as well.

#### **Financial Report:**

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

#### ***May, June, and July Financials***

Mr. Leasor stated the May, June, and July financials were emailed to each member. He asked if there were any questions or concerns regarding these reports. Hearing none, Mr. Leasor began with the July financials.

Mr. Leasor said there is currently \$3.5 million in the obligated account that is set aside for fiscal year 2011 claim settlement payments. He said the current unobligated balance is approximately \$5.5 million.

Mr. Leasor stated the outstanding bond debt of \$21.3 million plus the interest amount of approximately \$679,000 was paid on August 15, 2010.

Mr. Leasor said the claims expense for July was approximately \$220,000; and, as of September 8, the amount is up to about \$975,000.

Mr. Leasor said the operating expense for July totaled just over \$160,000. Mr. Leasor said the postage line item is at approximately 57% of the amount budgeted and includes postage costs for the annual fee statement mailing and the spring newsletter. He said the legal and professional line item is at approximately 21% of the amount budgeted and includes the 2010 fourth quarter payment for the services of the Assistant Attorney General. Mr. Leasor said this also includes fees assessed by the Attorney General's Revenue Recovery section as collection costs, which were higher this quarter due to special counsel fees.

Mr. Leasor noted all other expenses are on target for this time in the fiscal year.

### ***Amnesty Program***

Mr. Leasor explained the Amnesty Program, which was discussed at the last Board meeting, stating in an attempt to resolve outstanding late fees without escalating delinquent accounts to the Attorney General's Office for collection, the Board offered its first ever amnesty program to owners with outstanding per-tank and late payment fees. He explained that the owners were provided a reduction in their late payment fees based upon a pre-set formula. Mr. Leasor reiterated that the amnesty was applied only to reduce the late payment fees, not the annual per-tank fees. To participate in the program, owners were required to make payment arrangements prior to July 1, 2010.

Mr. Leasor said 73 owners called to take advantage of the program. He said these owners accounted for outstanding annual fees and transfer fees of \$393,000 and late payment fees of \$550,000 prior to the amnesty reduction. He said under the amnesty program guidelines, these outstanding late fees were reduced to \$78,000, including the 10% collection costs assessed by the Attorney General's Revenue Recovery section, if applicable. Mr. Leasor said to date 34 owners had submitted the total outstanding fees due, totaling approximately \$151,000. An additional 20 owners had established and are maintaining payment arrangements with the Attorney General's Office. He said 15 owners had defaulted on the requirements to participate in the amnesty program and their late fees were reset to the pre-amnesty amounts. The Board's staff continues to work with the remaining four owners.

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

Mr. Leasor said for the 2010 program year, there had been a little under \$13.5 million collected in current year fees to date, and just over \$265,000 collected in prior year fees, which represents 94.7% of the \$14.49 million budgeted fee revenue. He said 3,244 owners had paid fees for 20,622 tanks. Mr. Leasor explained that 72% of the fees were paid at the standard deductible and 28% were paid at the reduced deductible.

### **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 the 1,567 in-house above deductible open claims is approximately \$27 million. Ms. Duann said using the historical claim payout ratio of 65% the actual anticipated claim liability of unpaid in-house claims is about \$17.6 million.

She said 1,868 Fund eligible sites had received an NFA and the average cleanup cost is \$126,700 per NFA site and the average claim payout is just over \$68,500 per NFA site. Ms. Duann said that for the 178 NFA sites cleaned up exclusively under BUSTR's 1999 and/or 2005 risk based corrective action (RBCA) rule, the average cleanup cost is just under \$71,000 per site with an average payout of approximately \$22,500.

Ms. Duann said there are currently 28 claims under appeal. She stated a number of these appealed claims are in settlement negotiations or are scheduled for a hearing.

Ms. Duann said during the 2009 program year, the claims staff received a total of 799 claim packages and 761 had been settled or closed. She said the settlement amount offered in the 2009 program year totaled \$7.6 million, making the average claim payout 66.2% of the net value.

Ms. Duann said for the first two months of this program year, the Board received 123 claim packages and settled or closed 108 claims.

Ms. Duann said the Board received six eligibility applications for the first two months of this program year and 17 eligibility applications were determined with an approval rate of 76%. She said currently there are 14 open eligibility applications to be determined.

Ms. Duann said typically cost pre-approvals are being reviewed within 45-60 days of receipt. She said during July and August the Board received 30 requests for cost pre-approval and issued 56 pre-approval notifications. Ms. Duann said there are currently 74 cost pre-approval applications in-house to be reviewed.

### **Old Business**

Chairman Rocco welcomed Madelin Esquivel, the new Assistant Director of the Petroleum Underground Storage Tank Release Compensation. Ms. Esquivel briefly introduced herself and stated she would officially be joining the Board's staff on Monday, September 13, 2010.

### ***Finance Committee Report***

Chairman Rocco said the outstanding bond debt had been paid on August 15, 2010; and, the Finance Committee and Director Richmond had begun to research the issuance of new bonds. He said bond counsel had been contacted; however, counsel requested payment for services rendered regardless of whether or not the Board issued a third series of revenue bonds. Chairman Rocco stated the intent of the Board was to take payments for bond counsel, financial advisor, and any other expenses from the proceeds of any newly issued bonds, and these payments would be contingent on the sale of bonds. He said due to counsel's requirement, he directed Ms. Richmond not to move forward with this matter until after the Board had an opportunity to discuss the issuance of new bonds at this meeting.

Chairman Rocco stated he had concerns relative to the issuance of new bonds and proposed the Board discuss other options to obtaining funds for "just in case" situations during the next year or so.

Chairman Rocco called on Mr. Leasor to present an 11-month cash flow chart and three proforma operating statements reflecting: 1) no new bonds issued; 2) \$5 million bond issued for five years; and, 3) \$5 million bond issued for ten years. Mr. Leasor said after the old bond debt had been paid on August 15, 2010, there was approximately \$5.4 million in the unobligated account. Mr. Leasor said currently there was \$4.5 million obligated for claims payments; and, later in the year the Board would need to consider obligating an additional amount toward the total \$9 million budgeted for claims reimbursements this fiscal year. He noted if the Board obligated the remaining \$4.5 million, the unobligated balance would drop below \$1 million and in April 2011 could be as low as \$430,000. Mr. Leasor noted however, by May 2011, fee collections would start coming in and by the beginning of the fiscal year, July 1, the unobligated balance would be approximately \$10.1 million.

Following a lengthy discussion among the Board members, Chairman Rocco recommended that the Finance Committee defer making a decision on the sale of bonds until exploring the possibilities of a Line of Credit, a Letter of Credit, and a Promissory Note. He requested Ms. Hawkinson, Assistant Attorney General, to research the statute regarding whether the Board had the authority to go forward with securing negotiable instruments other than the sale of bonds. He also requested Ms. Hawkinson discuss with the Ohio Treasurer of State's office whether the Board was required to work with that office and financial institutions doing business with the Treasurer's office or if the Board could work independently and issue request for proposals to banks selected by the Finance Committee. Chairman Rocco stated the Finance Committee would report to the members at the November meeting.

### ***Litigation Issue Regarding “Double-Dipping”***

Chairman Rocco said the Ohio Attorney General issued a press release on September 1<sup>st</sup> announcing that five major oil companies had been notified that his office was reviewing whether these companies had been receiving compensation from the Petroleum UST Release Compensation Board while also receiving compensation on the same claims from their insurance carriers.

Ms. Richmond requested direction from the Board as to whether the staff should continue to review, process, issue determinations, negotiate lump-sum settlements, and make payments regarding these five major oil companies while the Ohio Attorney General continues to investigate the double-dipping issue.

Chairman Rocco stated that due to the fact that many of the major oil companies have contracted much of their cleanup to third parties or sold their sites and are no longer responsible for the cleanup of many of these sites, it appears to be in the best interest of the economy and the environment to continue with the claims settlement process.

Chairman Rocco requested a motion to instruct the Executive Director to continue business as usual as far as the settlement and negotiation of claims with the caveat that settlement agreements would be reviewed by legal counsel to insure the Board does not waive subrogation rights, and also with respect to lump sum payments with the acknowledgement that the payment of these claims may be contingent upon any settlement of litigation. Mr. Hightower so moved. Ms. Hilvert seconded and a vote was taken. All members voted in favor and the motion passed.

### **New Business**

Chairman Rocco called upon Ms. Richmond to present the hardship applications. Ms. Richmond stated when hardship status is granted to an owner that owner's claims are reviewed within 30-days of receipt, thereby reducing the owner's financial burden. A hardship status is granted for one year and can be renewed annually by submitting another application accompanied with updated financial information.

### ***Hardship Applications***

#### **Claim #10650-0001/07/09/96, Owner – Robert Tishue, dba Former Tishue's Carryout**

Ms. Richmond said Mr. Tishue submitted this application for a 1996 petroleum release that occurred at a facility he previously owned on West Pike Street in Morrow, Ohio. Mr. Tishue has continued to clean up the site. She said this is Mr. Tishue's seventh request for hardship status; one of the six previous requests had been denied in November 2006 because no claims were pending reimbursement at that time. Ms. Richmond said the last request was submitted in September 2009 and expires this month. She said to date the Fund had reimbursed Mr. Tishue just over \$83,000.

Ms. Richmond said Mr. Tishue is retired and that he sold the property in April 1999. Tishue's Carryout and Oil Company had been dissolved. She stated that based on the financial information submitted with the application and obtained during a phone conversation with Mr. Tishue, his reported annual expenses exceed his reported income and he is drawing from his savings to make up the difference.

Ms. Richmond stated that in addition to the review of the hardship application, a U.S. Environmental Protection Agency (EPA) financial capacity test was used to evaluate Mr. Tishue's cash flow and to determine whether he had the ability to carry debt. The financial capacity test indicated Mr. Tishue lacked the resources to cover future living expenses and it is highly unlikely he could afford corrective action costs.

Ms. Richmond recommended that the Board approve this application and grant hardship status to Robert Tishue. Mr. Hull moved to approve the application. Mr. Epperson seconded and a vote was taken. All members voted in the affirmative. The motion carried.

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

Ms. Richmond said Mr. Cooper submitted this application for a release that was discovered in 1990 when the underground storage tanks were removed from 111 East Main Street in Lucas, Ohio. She said this is Mr. Cooper's seventh request for hardship status; he was last granted hardship status in 2003, which expired in February 2004. She said to date the Fund had reimbursed Mr. Cooper slightly over \$248,000 and one claim application of approximately \$20,000 is currently pending review.

Ms. Richmond said Mr. Cooper is retired and no longer owns the property. She said the review of the hardship application and the results of the U. S. Environmental Protection Agency (EPA) financial capacity test indicate Mr. Cooper should have the ability to afford corrective action costs of \$40,000, which he could finance over time, if necessary.

Ms. Richmond stated, however, in spite of these results, she recommended that the Board approve this application and grant hardship status to Raymond Cooper because Mr. Cooper's only income is from pensions and social security; and, both Mr. Cooper and his wife have significant health-related issues. Mayor Kuchta moved to approve the hardship application. Mr. Geyer seconded and a vote was taken. All members voted in the affirmative. The motion carried.

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

Ms. Richmond said Mr. Jeffers submitted this application for a 1995 release that occurred at 89 South Main Street in Fredericktown, Ohio. She said this is his first application for hardship status. Ms. Richmond said to date the Fund had reimbursed Mr. Jeffers' approximately \$100,000 and there is one claim of approximately \$13,000 pending review.

Ms. Richmond said Mr. Jeffers ceased operating the facility and sold it in March 2007. She said the new owner operates the site as an active retail station. Ms. Richmond said Mr. Jeffers is retired and until recently had been in a nursing home. She said although Mrs. Jeffers continues to work outside of the home, the number of hours she is able to work had dramatically decreased since she is now Mr. Jeffers' primary caregiver.

Ms. Richmond said in addition to the review of the hardship application, a U.S. Environmental Protection Agency (EPA) financial capacity test was used to evaluate Mr. Jeffers' cash flow and determine whether he had the ability to carry additional debt to finance the costs of corrective action. She said the financial capacity test indicated Mr. Jeffers' does not have adequate cash flow to self finance corrective action costs for the current claim.

Ms. Richmond recommended that the Board approve this application and grant hardship status to Bob Jeffers. Mr. Hull moved to approve the application. Mr. Cable seconded and a vote was taken. All members voted in the affirmative. The motion carried.

**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 behind Tab 9 there are two lists of owners. The first is a listing 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. She said behind Tab 10 there is a listing of owners who had been issued a program year 2009 Certificate of Coverage, and behind the blue divider page, a listing of owners who had been denied a program year 2009 Certificate of Coverage since the June Board meeting.

Ms. Richmond said 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 was considered to determine whether tanks for which coverage is sought are in compliance with BUSTR's rules. Ms. Richmond said if there are no issues, the facility receives a Certificate of Coverage.

Ms. Richmond explained if compliance issues are discovered, notice is provided to owners in accordance with the Board's rules and the Revised Code. Throughout this process the Board's staff works with the owners to correct the fee statement record and/or refers the owners to BUSTR to correct the registration record. She stated 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 the Board to ratify her actions with respect to the 11 owners of 78 facilities receiving 2008 Certificates of Coverage.

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

Ms. Richmond stated 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 the Board to ratify her actions with respect to the 35 facilities that were denied a Certificate of Coverage for program year 2008.

Mr. Hull moved to ratify the list of 2008 Certificates of Coverage that were denied. Mr. Epperson 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 98 owners of 283 facilities receiving 2009 Certificates of Coverage.

Mr. Hull moved to ratify the list of 2009 Certificates of Coverage that were granted. Mr. Cable 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 166 facilities that were denied a Certificate of Coverage for program year 2009.

Mr. Hull moved to ratify the list of 2009 Certificates of Coverage that were denied. Ms. Hilvert seconded. A vote was taken and all of the members were in favor. The motion passed.

Ms. Richmond said behind Tab 11 there is a listing of owners who had been issued a program year 2010 Certificate of Coverage.

Ms. Richmond stated the process to issue and, if appropriate, deny a Certificate of Coverage changed in November 2009 with the amendments to the Board's rules. She said under the new rule, the review

of BUSTR registration data to determine compliance with the State Fire Marshal's rules was eliminated.

Ms. Richmond explained during the review for the 2010 program year Certificates of Coverage the staff now only ensures full payment has been received; financial responsibility for the deductible is demonstrated; and, the owner has certified with his signature that he is in compliance with the State Fire Marshal's rules. She said if the staff determines all these requirements have been met, the tanks existed in previous years and a Certificate for the subject tanks was issued to the owner in at least one of the prior two years, then a Certificate of Coverage is issued. Ms. Richmond said if the requirements are not met, the Certificate is denied in accordance with the Board's rules as previously discussed. She said that to date, no 2010 Certificates had been denied.

She said all processes within the Board's rules and the Revised Code were followed to make the determination to issue the program year 2010 Certificates of Coverage.

Ms. Richmond asked the Board to ratify her actions with respect to the 2,244 owners of 3,761 facilities receiving 2010 Certificates of Coverage on the list behind Tab 11.

Mr. Hull moved to ratify the list of 2010 Certificates of Coverage that were granted. Mr. Epperson seconded. A vote was taken and 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. Cable so moved. Mr. Hull seconded and a roll call vote followed. The following members voted in the affirmative: Messrs. Rocco, Hull, Cable, Epperson, Hightower, Kmiec, Kuchta, Thompson, Stephenson, Geyer, and Mmes. Hilvert and Pierson. There were no nays and the motion passed.

Prior to moving into executive session, Chairman Rocco and Mr. Epperson recused themselves from this portion of the meeting. Chairman Rocco turned the meeting over to Vice Chairman Hull.

#### ***Reconvene Meeting***

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

Mr. Geyer moved that the Board authorize the Attorney General's office to continue to work with the Vice Chairman and the Executive Director regarding investigation, discussion, and/or negotiations with the entities noted in the published demand letters for a resolution; and, report to the Board the status of said negotiations prior to the initiation of a lawsuit or settlement agreement and any initiation of a lawsuit or settlement agreement shall require approval of the Board. Mr. Kmiec seconded.

Mr. Stephenson stated it was his personal opinion that the published demand letters were inaccurate in his mind, however, he would not oppose the Vice Chairman and the Executive Director, but he would like to state for the record that he is very much against the entire process.

Chairman Rocco noted there was a motion on the floor. A roll call vote followed. The following members voted in the affirmative: Messrs. Hull, Cable, Kmiec, Kuchta, Thompson, Stephenson, Geyer, and Mmes. Hilvert and Pierson. Mr. Hightower was absent for the vote. Messrs. Rocco and Epperson recused themselves from the vote. There were no nays and the motion passed.

***Confirm Next Meeting***

Mr. Kmiec made a motion to adjourn the meeting. Mayor Kuchta seconded. All were in favor. The next board meeting will be Wednesday, November 10, 2010, beginning at 10:00 a.m.