



Petroleum Underground Storage Tank Release Compensation Board

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MINUTES OF THE 148th MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD September 4, 2013

BOARD MEMBERS IN ATTENDANCE

Jim Rocco
John Hull
Cheryl Hilvert
Bruce Kranz
Don Kuchta

EX-OFFICIO MEMBERS IN ATTENDANCE

Bill Hills, representing Director Andre Porter, Ohio Department of Commerce
Chris Geyer, representing Scott Nally, Ohio Environmental Protection Agency
Bob Field, 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
Dave Gram	Environmental Claims Analyst, PUSTRCB
Val Gatallin	Environmental Claims Analyst, PUSTRCB
Jonathan Maneval	Administrative Coordinator, PUSTRCB
Krista Nichols	Accounts Receivable Specialist, PUSTRCB
Britanya Poe	Office Assistant, PUSTRCB
Carla Dowling-Fitzpatrick	Assistant Attorney General
Will Latt	Speedway, LLC
Ryan Sabol	Speedway, LLC
Doug Darrah	Cardno ATC
Dan Adams	Cardno ATC
Gary Fricke	Lee and Ryan Environmental Consulting, Inc.
Christie Kuhlmann	Stantec Consulting Services Inc.

Minutes submitted by:

Jonathan Maneval
Administrative Coordinator

Call to Order:

Chairman Rocco convened the one hundred forty-eighth meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, September 4, 2013. The following members were in attendance:

Jim Rocco; John Hull; Cheryl Hilvert; Bruce Kranz; Don Kuchta; Bill Hills, representing Director Andre Porter, Ohio Department of Commerce; Chris Geyer, representing Scott Nally, Ohio Environmental Protection Agency; and Bob Field, representing Josh Mandel, State Treasurer of Ohio.

Chairman Rocco introduced two recently hired Environmental Claims Analysts, Dave Gram and Val Gatallin.

Minutes:

Chairman Rocco asked if there were any comments or questions regarding the minutes from the June 12, 2013 Board meeting, and there were none. Mayor Kuchta moved to approve the minutes. Vice-Chairman Hull seconded. A vote was taken and all members voted in the affirmative. The motion passed.

Election of Officers and Committee Member Appointments:

Chairman Rocco entertained motions from the floor for the nomination of officers for the upcoming year. Mr. Geyer moved to re-elect both Chairman Rocco and Vice-Chairman Hull to their respective offices. Ms. Hilvert seconded.

Mayor Kuchta moved to close the nominations and Mr. Hills seconded. A vote was taken and all members voted in the affirmative. The motion carried. Chairman Rocco stated the nominations are closed.

Chairman Rocco said there is a motion on the floor to re-elect Mr. Rocco as Chairman and Mr. Hull as Vice Chairman. A vote was taken and all members voted in the affirmative. The motion passed.

Finance Committee

Chairman Rocco stated the Chairman and Vice Chairman serve on the Finance Committee. Chairman Rocco asked Mr. Kranz to join the Finance Committee and he agreed. The Finance Committee members are Chairman Rocco, Vice-Chairman Hull and Mr. Kranz.

Rules Committee

Chairman Rocco asked Mayor Kuchta, Mr. Geyer and Ms. Hilvert to serve on the Rules Committee and all agreed. Chairman Rocco appointed Mayor Kuchta to serve as the committee chair. The Rules Committee members are Mayor Kuchta, Mr. Geyer and Ms. Hilvert. Chairman Rocco and Vice-Chairman Hull will work on the committee in an ad hoc capacity.

2014 Meeting Dates

Chairman Rocco set the following 2014 meeting dates: January 15, February 19 (tentative), March 12, June 11, September 3 and November 19. All meetings begin at 10:00 a.m.

BUSTR Report:

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

Mr. Hills reported that three vacant positions on the leaking underground storage tank (LUST) side of the program will not be filled. The positions include an Environmental Specialist 2, a file room clerk and an attorney.

Mr. Hills stated the LUST grant was cut about \$140,000 in fiscal year 2013. He said the UST grant was reduced approximately \$200,000 for fiscal year 2014.

Mr. Hills said the Revolving Loan Fund was passed as part of Ohio's state budget. This Fund will provide financing to enable political subdivisions to address the removal of abandoned underground storage tank systems. He said the rule is in draft form. He noted a meeting with interested parties is tentatively scheduled for September 30, 2013, at the State Fire Marshal's office.

Mr. Hills said BUSTR has been working closely with Ohio EPA's Division of Emergency and Remedial Response (DERR) to provide classroom and hands on training.

Mr. Hills said the State Fire Marshal was selected to host the US EPA Region 5 underground storage tank installer training in April 2014. He said BUSTR continues to partner with DERR and others to provide training to stakeholders.

Mr. Hills reported the OTTER database upgrade project has come to a conclusion. He said there is an agreement with the vendor, Ventech, to complete a list of additional items.

Mr. Hills said click scheduling is working well. Click scheduling is a GPS driven computer program that geographically schedules the inspectors to visit facilities that are located in the same geographical area. He noted that since the program is new, inspectors are performing first visit inspections rather than re-inspections.

Mr. Hills reported that for the week ending August 23, 2013, 75 inspections were performed for a total of 788 inspections for the three-year inspection cycle ending June 30, 2016. He noted that 10 to 12 inspectors performing 75 inspections in one week indicates they are performing easier inspections due to the implementation of click scheduling.

Mr. Hills stated that ten NFAs (no further actions) were issued for the week ending August 23, 2013, for a total of 573 NFAs for the grant cycle ending September 30, 2013. He noted this number is slightly behind target projections. However, he anticipates meeting the goal.

Mr. Hills stated the tank count statistics remain fairly stable. He said there are about 3,750 owners of 7,500 registered facilities and roughly 22,000 registered USTs.

Vice-Chairman Hull asked how much money is in the Revolving Loan Fund. Mr. Hills responded stating \$1.5 million is currently in the Fund and there is a commitment to add additional monies to the Fund.

Financial Report:

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

Audit Update

Mr. Leasor said the auditors will begin the in-house portion of the audit in mid-September. He said the audited financial statements are due to the Auditor of State by December 31, 2013. He anticipates the audited financial statements will be presented at the November Board meeting in order to meet the December deadline.

May, June and July Financials

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

Mr. Leasor said as of September 4, 2013, the unobligated account balance is a little over \$12.8 million and the obligated account balance is about \$8.2 million. Chairman Rocco questioned whether the \$12.8 million unobligated account balance includes the \$6 million invested in US treasuries and US agency callable bonds. Mr. Leasor responded stating it did not.

Mr. Leasor said tank revenues would be discussed as part of his fee statement statistics report.

Mr. Leasor stated the interest income for July was \$9,000. He said this amount includes the interest earnings from the STAR Ohio accounts along with the interest accrued on the \$6 million invested in US treasuries and US agency callable bonds and the unrealized gain, based on the market value of the investments as of July 31, 2013. Mr. Leasor said the required method of reporting the investments at market value results in increases or decreases in interest income. If the investments are held to maturity, the Board will receive the par value of the US treasuries and US agency callable bonds. Vice-Chairman Hull requested, for presentation purposes, the report show separately the actual interest earned and the unrealized gain or loss based on the market value of the investments.

Mr. Leasor said the claims expense for July was approximately \$156,000, and to date, approximately \$766,000 had been paid for claims for fiscal year 2014.

Mr. Leasor said the operating expenses for July were approximately \$130,000. He pointed out the legal and professional expenses were (\$282) in July. He said this negative amount was due to the timing of owners' fee payments which included the payment of collection costs and the invoicing of these costs by the Attorney General's Office.

Mr. Leasor stated that as of July 31, 2013, postage expenses were approximately 56% of the amount budgeted. He said this is due to postage charges for the final quarter of fiscal year 2013 being paid in July of fiscal year 2014. He said postage expenses are higher during that time of the year due to the annual mailing of the fee assessment statements.

Mr. Leasor said all other expenses are where they should be at this time in the fiscal year.

Fee Statement Statistics

Mr. Leasor said as of September 3, 2013, the per-tank fees collected were approximately \$13.3 million, which represents 95% of the billed amount. He said between July 1, 2013 and

September 3, 2013, approximately \$111,000 was collected for prior year fees, net of refunds of \$6,800.

Mr. Leasor said for program year 2013, fees for just under 16,100 tanks were billed at the standard deductible (\$55,000) per-tank fee and for about 5,500 tanks at the reduced deductible (\$11,000) per-tank fee. Mr. Leasor said as of September 3, 2013, the number of tanks for which fees have been paid at the standard deductible rate is a little under 14,800 and fees for 5,600 tanks have been paid at the reduced deductible rate. He said fees for a total of 20,371 tanks were paid by 3,193 owners. He said this compares to fees being paid for 20,397 tanks by 3,219 owners for the same period of time in the previous fiscal year.

Mr. Leasor said for the 2012 program year, fees have been paid for a total of 21,042 tanks by 3,330 owners.

Mr. Leasor stated the \$13.4 million collected to date represents 96% of the \$14 million budgeted for program year 2013. He said the 2013 program year's fees paid for 20,371 tanks represents 98.4% of the 20,700 tanks budgeted for the program year.

Compliance/Fee Assessment Report:

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

Ms. Esquivel explained that her report would include the numbers for program years' 2012 and 2013. She said the numbers reported for program year 2013 are low when compared to 2012 because the program year just started on July 1, 2013.

Ms. Esquivel reported that \$273,165 refunds were paid for the 2012 program year which ended June 30, 2013. She stated as of July 31, 2013, \$5,440 refunds have been paid to 20 owners so far this program year, which began July 1, 2013. She said the amount of refunds pending totals \$1.3 million.

Ms. Esquivel stated for program year 2012, a total net amount of \$268,698 was collected by the Attorney General's Office and Special Counsel. She said as of July 31, 2013, a net total of \$22,870 was collected by the Attorney General's Office and Special Counsel for program year 2013.

Ms. Esquivel said since July 1, 2013, no accounts had been certified to the Attorney General's Office for collection. She said the next certification will occur in late September. She reported 604 accounts totaling \$1,939,685 were certified to the Attorney General's Office for collection during program year 2012. She pointed out that the amount of fees certified for collection each year has been steadily increasing.

Chairman Rocco asked whether the \$1.9 million certified to the Attorney General's Office for collection was a cumulative total. Ms. Esquivel stated it was not. Chairman Rocco recommended the report be updated to include the cumulative total of accounts certified, similar to the cumulative total shown for pending refunds.

Ms. Esquivel said three Orders Pursuant to Law and two Determinations to Deny a Certificate of Coverage are under appeal and are currently in review.

Ms. Esquivel said two Ability to Pay Applications are pending review. The Ability to Pay program allows former UST owners experiencing financial difficulty to apply for and receive a determination of their ability to pay delinquent fees.

Ms. Esquivel reported 3,477 Applications for Certificates of Coverage were mailed at the end of April, and as of August 23, 2013, Certificates of Coverage had been issued to 2,847 owners. She said this represents 88% of the number of certificates that were issued during program year 2012.

Ms. Esquivel said as of August 23, 2013, Pending Denials had been issued to six owners for program year 2013. She said no Determinations to Deny a Certificate of Coverage had yet been issued for program year 2013.

Ms. Esquivel stated there are 32 uncashed refund checks that total \$26,495. She said there is \$18,665 in refunds pending for 58 owners from whom more information has been requested.

Claims Report:

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

Ms. Duann reported as of August 1, 2013, the total maximum liability of in-house open claims is \$29.2 million. She said using the historical average claim payout ratio of 70% the anticipated claim liability of unpaid claims is about \$20.4 million. She stated, as of August 1, 2013, a total of 2,122 Fund eligible sites had been issued NFAs with an average cleanup cost of \$128,400 per site.

Ms. Duann said as of August 1, 2013, there are 1,763 claims pending review and 14 claim settlement determinations under appeal.

Ms. Duann reported that during the 2012 program year, 728 claim applications were received and 750 claims were either settled or closed. She said the total claim settlement offer was \$6.7 million with an average claim payout of 71.6% of the net value. She said this claim payout ratio is similar to the last two years' statistics. She noted that over 73% of the claims settled had been received from major oil companies.

Ms. Duann said in July and August an unusually high number of claims were received. She said 93 claims were received in July and 100 claims were received in August. She stated even with two new claims reviewers, they were still able to settle 62 claims in July and 58 claims in August. She said she anticipates more complex claims with higher face values will be reviewed in the upcoming months.

Ms. Duann reported for the 2012 program year, 87 eligibility applications were received, and 71 eligibility determinations were issued with an approval rate of 76%. She said this approval rate is similar to the last two years' statistics. She said of the 17 eligibility denials, eight were denied for no release from the assured tank systems or no corrective actions were required, four were

denied for the tank system being out of compliance, two were denied for late filing and one was denied for no valid Certificate of Coverage.

Ms. Duann said that in July, 17 eligibility determinations were issued while only six eligibility applications were received. She noted this was a good start for program year 2013. She said as of August 1, 2013, there are 18 eligibility applications pending review.

Ms. Duann said for the 2012 program year, a total of 186 requests for cost pre-approval were received, and 234 cost pre-approval notifications were issued. She said 39 of the pre-approval notifications are related to RAPs (remedial action plans). She said currently only 49 cost pre-approval requests are pending review.

Certificates of Coverage – Ratifications:

Chairman Rocco called upon Starr Richmond, Executive Director, to present the lists of owners who had either been issued or denied a Certificate of Coverage for ratification by the Board.

Ms. Richmond said that behind Tabs 7 and 8 are listings of facilities that, since the June Board meeting, had been issued or denied a program year 2012 or 2013 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 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 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 2012 program year Certificates of Coverage for the 67 facilities included on the list behind Tab 7.

Vice-Chairman Hull moved to ratify the issuance of the 2012 Certificates of Coverage for the facilities listed. Mayor Kuchta seconded. A vote was taken and all members voted in the affirmative. The motion passed.

Ms. Richmond requested the Board ratify her actions with respect to the denial of the 2012 program year Certificates of Coverage for the 32 facilities included on the list behind the Tab 7 blue divider page.

Mayor Kuchta moved to ratify the denial of the 2012 Certificates of Coverage that were listed. Vice-Chairman Hull seconded. A vote was taken and all members voted in the affirmative. The motion passed.

Ms. Richmond requested the Board ratify her actions with respect to the issuance of the 2013 program year Certificates of Coverage for the 2,267 owners of 4,969 facilities included on the list behind Tab 8.

Vice-Chairman Hull moved to ratify the issuance of the 2013 Certificates of Coverage for the facilities listed. Mayor Kuchta seconded. A vote was taken and all members voted in the affirmative. The motion passed.

Ms. Richmond stated that to date, no 2013 program year Certificates of Coverage had been denied.

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. Kranz so moved. Mayor Kuchta seconded. Chairman Rocco called for a roll call. The following members voted in the affirmative: Ms. Hilvert and Messrs. Hull, Kranz, Kuchta, Hills, Geyer and Field. Chairman Rocco abstained. There were no nays. The following members were absent for the vote: Messrs. Hightower and Stephenson. The motion passed.

Prior to moving into executive session, Chairman Rocco 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 and Adjourn:

Chairman Rocco stated that the next Board meeting will be on Wednesday, November 20, 2013, at 10:00 a.m.

Mayor Kuchta made a motion to adjourn the meeting and Vice-Chairman Hull seconded. All were in favor.