



Petroleum Underground Storage Tank Release Compensation Board

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MINUTES OF THE 170th MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD September 13, 2017

BOARD MEMBERS IN ATTENDANCE

Jim Rocco
John Hull
Don Bryant
Ron Falconi
Tom Stephenson

EX-OFFICIO MEMBERS IN ATTENDANCE

Bill Hills, representing Director Jacqueline Williams, Ohio Department of Commerce
Chris Geyer, representing Director Craig Butler, Ohio Environmental Protection Agency
J.D. Pisula, representing Josh Mandel, State Treasurer of Ohio

OTHERS IN ATTENDANCE

Starr Richmond	Executive Director, PUSTRCB
Madelin Esquivel	Assistant Director, PUSTRCB
Don Leasor	Chief Fiscal Officer, PUSTRCB
Cindy Duann	Claims Supervisor, PUSTRCB
Jonathan Maneval	Administrative Coordinator, PUSTRCB
Homayoun Sharifi	Environmental Claims Analyst, PUSTRCB
Cindy Knight	Accounts Receivable Analyst, PUSTRCB
Jennifer Croskey	Assistant Attorney General
Claire Linkhart	API-Ohio
Dan Adams	ATC Group Services LLC
Sean Hetrick	BJAAM Environmental, Inc.

Minutes submitted by:


Jonathan Maneval
Administrative Coordinator

Call to Order:

Chairman Rocco convened the one hundred seventieth meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, September 13, 2017.

The following members were in attendance: Jim Rocco; John Hull; Don Bryant; Ron Falconi; Tom Stephenson; Bill Hills, representing Director Jacqueline Williams, Ohio Department of Commerce; Chris Geyer, representing Director Craig Butler, Ohio Environmental Protection Agency; and J.D. Pisula, representing Josh Mandel, State Treasurer of Ohio.

The following member was not present: Scott Fleming.

Minutes:

Chairman Rocco asked if there were any comments or questions regarding the minutes from the June 23, 2017 Board meeting and there were none. Mr. Hills moved to approve the minutes. Mr. Bryant seconded. A vote was taken and the following members voted in the affirmative: Messrs. Bryant, Geyer, Hills, Pisula, Rocco, and Stephenson. Vice-Chairman Hull and Mayor Falconi abstained. The minutes were approved as presented.

Election of Officers and Committee Member Appointments:

Chairman Rocco requested motions from the floor for the nomination of officers for the upcoming year. Mr. Bryant made a motion to re-elect Jim Rocco as the Chairman. Mayor Falconi seconded. Hearing no other nominations, a vote was taken and all were in favor. Mr. Rocco will remain as Chairman.

Mr. Geyer made a motion to re-elect John Hull as the Vice-Chairman. Mr. Bryant seconded. Hearing no other nominations, a vote was taken and all were in favor. Mr. Hull will remain as Vice-Chairman.

Rules and Finance Committee Appointments

Chairman Rocco stated that the Chairman and Vice Chairman serve on both the Rules and Finance Committees. Chairman Rocco then appointed Mr. Fleming, Mayor Falconi, and the designee from the Ohio EPA to serve on the Rules Committee. He appointed Mr. Bryant, Mr. Stephenson, and the designee from the State Treasurer's Office to serve on the Finance Committee.

2018 Meeting Dates

Chairman Rocco set the following meeting dates: January 10, February 14 (tentative), March 21, June 13, September 12, and November 28, 2018. All meetings will 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 stated that there had been no personnel changes since the June Board meeting. He reported that 28 grants totaling \$4.3 million had been awarded through the Abandoned Gas Station Cleanup Grant Program. The program is administered by the Ohio Development Services Agency, in

partnership with the Ohio EPA and BUSTR, and has \$20 million available to local government entities to cleanup abandoned gas station sites. He said that five grant applications are being reviewed.

Mr. Hills stated that the UST and LUST grant monies for fiscal year 2018 had been received from the U.S. EPA Region 5 Office and there had been no funding cuts from the previous year. He noted that six years ago the federal funding was about \$5.3 million and the grants now total \$2.8 million.

Mr. Hills said the BUSTR administrative rule packages were final filed and the rules became effective on September 1, 2017. He thanked everyone that participated in the rule-making process and said the State Fire Marshal will host underground storage tank seminars concerning the new rules on September 20, November 7, and November 13, 2017.

Mr. Hills reported for the week ending September 2, 2017, there were 22 new inspections performed for a total of 4,051 inspections for the three-year inspection cycle. He said that seven NFAs (no further actions) were generated during the week ending September 2, 2017, for a total of 482 NFAs for the grant cycle ending September 30, 2017.

Mr. Hills stated that, as of September 2, 2017, there were 21,461 registered USTs (underground storage tanks) and 3,608 owners of 7,229 registered facilities.

Vice-Chairman Hull asked whether the Abandoned Gas Station Cleanup Grant Program has a sunset date, and whether the \$20 million of grant funding is tied to a budget cycle requiring the money to be spent by a certain date. Mr. Hills explained that the money is controlled by the Development Services Agency and is not tied to the state's budget cycle or restricted by the Controlling Board. He added that if all \$20 million were to be awarded, he expects more moneys will be transferred into the fund as it has been a beneficial program. Chairman Rocco commented that the legislation that established the program did not include a sunset provision.

Financial Reports:

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

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 reported that, as of September 12, 2017, the unobligated account balance is \$27.2 million. He said this amount includes \$13.2 million in STAR Ohio and the custodial account, and the \$14 million invested in U.S. treasuries and U.S. agency callable bonds. He said the obligated account balance for the payment of claims is \$7.9 million.

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

Mr. Leasor said the claims expense for the month of July was \$409,000, and, to date, approximately \$1,146,000 had been paid for claims for fiscal year 2018.

Mr. Leasor said the operating expenses for the month of July were about \$140,000. He pointed out that, as of July 31, the temporary services expense was 19.7% of the amount budgeted. He said this was due to the use of two temporary service employees to fill vacant positions. He noted that employee expenses were 50% of the amount budgeted. He explained that this expense is for employee parking and said that only two months of parking had been budgeted for fiscal year 2018.

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

Chairman Rocco asked if the temporary services expenses are being offset by reduced salary expenses, and whether total labor costs were reasonably close to budget. Mr. Leasor said temporary services expenses are slightly lower than expenses for permanent employees due to benefit costs, and total labor expenses are about where they should be for the fiscal year.

Fee Statement Statistics

Mr. Leasor said, as of September 12, 2017, the per-tank fees collected were approximately \$9.2 million, which represents 97% of the billed amount. He said between July 1, 2017, and September 12, 2017, approximately \$81,700 was collected for prior years' fees, net of refunds of \$14,350.

Mr. Leasor said, for the 2017 program year, 15,400 tanks were billed at the standard deductible (\$55,000) per-tank fee and about 5,500 tanks were billed at the reduced deductible (\$11,000) per-tank fee. Mr. Leasor said, as of September 12, 2017, the fees had been paid at the standard deductible rate for a little under 14,600 tanks and at the reduced deductible amount for about 5,500 tanks. He said fees for a total of 20,097 tanks have been paid by 3,082 owners. He said this compares to fees being paid for 20,066 tanks by 3,088 owners for the same period of time in the prior year.

Mr. Leasor said, for the program year ended June 30, 2017, fees have been paid for a total of 20,535 tanks by 3,199 owners.

Mr. Leasor said the \$9.2 million collected to date represents 97.5% of the \$9.5 million budgeted for the 2017 program year. He said so far, for program year 2017, 98.8% of the fees have been received for the 20,350 tanks budgeted.

Audit Update

Mr. Leasor said the auditors are scheduled to begin their in-house portion of the audit the week of October 25th. He said the audited financial statements are due to the Auditor of State by December 31, 2017, and the goal is to have the audited financial statements presented at the November Board meeting in order to meet the December deadline.

Compliance and Fee Assessment Report:

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

Ms. Esquivel reported, as of August 31, 2017, refunds totaling \$6,550 have been paid to six owners for the 2017 program year and \$3,600 in refunds was used to offset prior years' outstanding fees. She said the combined amounts are about 4.6% of the refund goal of \$225,000 that was set for the program year. She said, as of August 31, 2017, there are 2,795 pending refunds totaling \$1,390,767.

Ms. Esquivel reported, as of August 31, 2017, the fees collected by the Attorney General's Office and Special Counsel less collection costs totaled \$16,141. She said no accounts have been certified to the Attorney General's Office for collection since July 1, 2017. She said the next certification will occur in the upcoming months and will include older accounts that have been reconciled and outstanding fees identified.

Ms. Esquivel said four Orders Pursuant to Law were under appeal. She said information for one appeal was received and is under review and information is expected for the three other appeals. She said that one Determination to Deny a Certificate of Coverage is under appeal and a hearing for that appeal was held in the month of August.

Ms. Esquivel said that five 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 that 2,460 Certificates of Coverage have been issued thus far for program year 2017. She said there are 623 Applications for Certificates of Coverage currently in process. She noted that the denial process has not been started for program year 2017.

Ms. Esquivel stated that there are 49 uncashed refund checks that total \$38,046. She said there are six owners with pending refunds totaling \$8,890 who have been sent letters notifying them that more information is needed before their refunds may be issued. She said there are 26 owners with pending refunds totaling \$29,745 for which information had been requested, but no responses have been received. Chairman Rocco asked whether all owners with pending refunds have been notified of the potential refund on their accounts. Ms. Esquivel said the owners with the \$1.4 million of pending refunds shown in the refunds portion of the report have not received notice of their refunds and she clarified that this amount includes refunds that have been entered but have not been reconciled by the staff. Mr. Bryant asked if the amount of pending refunds is year-to-date, and Ms. Esquivel stated that the pending refund amount was as of August 31, 2017.

Claims Reports:

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

Ms. Duann said, as of September 1, 2017, the total maximum liability of in-house open claims is \$30 million. She said that using the historical claim payout ratio of 75%, the actual anticipated claim liability of unpaid in-house claims is about \$22.5 million.

Ms. Duann reported that, as of September 1, 2017, a total of 1,504 claims with a total face value above the deductible amount were pending review. She noted that claims received in the month of June 2017 are currently being reviewed by the staff.

Ms. Duann stated that, as of September 1, 2017, a total of 17 claim settlement determinations were under appeal. She noted that since the June Board meeting, two new claim settlement appeals were received, and three claim settlement appeals had been resolved.

Ms. Duann reported that, during the 2016 program year, 670 claim applications were received and 725 claims were either settled or closed. She noted the number of claims received and settled are both lower than the previous year's average. She said the total claim settlement offer was slightly under \$7 million and the average per claim payout was about \$9,766. She said the average claim payout was 75.3% of the net value. She pointed out that the average claim payout and average claim payout ratio are similar to the previous years' statistics.

Ms. Duann said that, in the months of July and August, 102 claims were received, and a total of 111 claims were settled. She said, as mentioned in the previous Board meeting, the claims staff was focusing on the closure of several problematic claims with various issues. She said in the month of July, at least four of the 45 claims that were settled included large amounts of disallowed costs. She said, as a result, the average percentage of disallowed costs is unusually high. She said she does not anticipate this trend to continue, and the percentage will likely balance out as the program year continues.

Ms. Duann said that, during the 2016 program year, 76 eligibility applications were received and that 69 eligibility determinations were issued. She pointed out that these two numbers are almost identical to the previous two program years' numbers.

Ms. Duann said that, in the month of July, two eligibility applications were received and that 15 eligibility determinations were issued; in the month of August, 12 eligibility applications were received, and no determinations were issued; and halfway through the month of September, only one eligibility application had been received, and five determinations had been issued. She said currently, 34 applications are pending review and nine determinations are under appeal.

Ms. Duann reported that during the 2016 program year, a total of 128 requests for cost pre-approval had been received and 144 cost pre-approval notifications were issued. She said currently, 34 cost pre-approval requests are pending review. She said in general, the number of requests for cost pre-approval has decreased over the past years.

Mr. Bryant asked what numbers determine the total average gross value per closed site on the first page of the report. Ms. Duann explained that claims have been received for a total of 3,100 sites. She said, of these sites, a total of 2,449 sites had been issued NFAs and the claims have been closed. She said the total face value of the claims received for these NFA sites is divided by 2,449 and the average is \$132,314 per site. She noted that looking at the BUSTR report, the grants being awarded to cleanup sites through the Abandoned Gas Station Cleanup Grant Program average about \$153,000. She commented that this amount is pretty close in comparison to the Fund's average cleanup cost of about \$132,000.

New Business:

Hardship Applications

Chairman Rocco called upon Starr Richmond, Executive Director, to present the hardship applications.

Ms. Richmond stated that the Board's rule 3737-1-08 provides for an owner experiencing financial hardship to apply for hardship status with the Fund. She said granting hardship status allows for the

acceleration of the review of the claims submitted by the owner. Ms. Richmond noted that granting hardship status does not increase the amount of reimbursement to the tank owner. She stated that accelerating the review of the claim reduces the financial burden the owner would experience if the claims were reviewed and settled in the normal course of business. She said, once granted, the hardship status remains in effect for a one-year period and, at that time, the owner may reapply for hardship status.

Ms. Richmond stated that, in determining hardship status, the application and a minimum of two years of income tax records are reviewed. She said, in addition, a U.S. Environmental Protection Agency (U.S. EPA) financial capacity test is used to evaluate the owner's cash flow and determine whether the owner is able to carry debt, in which case, the owner could finance the costs of corrective actions over time.

Claim # 11924-0001/10/26/95, Owner – Herbert Adams

Ms. Richmond said that Herbert Adams is the responsible person for a 1995 release at 409 Church Street in Bradner, Ohio. She said this is his fourth request for hardship status and, to date, the Fund has reimbursed \$517,000 for corrective actions for this release.

Ms. Richmond said there are currently no claims pending review and the estimated corrective action costs for the next 12 months are \$15,000. She said Mr. Adams worked as a millwright and his wife was a postal carrier and they both retired in 2016. She said currently their income is from social security, annuities, and two rental properties which generate a combined \$3,000 annually.

Ms. Richmond explained that the financial information was reviewed using the U.S. EPA financial capacity test for retirees which looks only at their income from pensions compared to their annual living expenses. It does not include any cash, investments, or other assets when making the evaluation. She said, based on the information provided on the application and the financial capacity test for retirees, Mr. Adams does not have adequate cash flow or the ability to carry additional debt in order to pay corrective action costs.

Ms. Richmond recommended the Board approve the application and grant hardship status to him. Vice-Chairman Hull so moved, and Mr. Bryant seconded. A vote was taken and all members voted in the affirmative. The motion passed.

Claim # 14094-0001/09/07/11, Owner – The Gas Station Enterprise, LLC

Ms. Richmond said The Gas Station Enterprise, LLC is the responsible party for a 2011 release at 207 South High Street in Columbus Grove, Ohio. She said that as a member of the LLC, Gregory Miller submitted the application requesting the Board grant hardship status to The Gas Station Enterprise, LLC. She noted this was the fourth request for hardship status.

Ms. Richmond stated that, to date, the Fund has reimbursed over \$84,000 for corrective action costs for this release. She said there is currently one unsettled claim in house totaling \$20,000 and the estimated corrective action costs for the next 12 months are \$48,000.

Ms. Richmond explained that Mr. Miller no longer owns the release site and the LLC no longer generates revenue, but Mr. Miller is continuing the corrective actions for the release. She said Mr.

Miller is retired and his only sources of income are from social security, investment income, and six rental properties which provide income of about \$5,400 per year.

Ms. Richmond said, based on the hardship application and the U.S. EPA financial capacity test for retirees, Mr. Miller does not have adequate cash flow or the ability to carry additional debt in order to pay corrective action costs.

Ms. Richmond recommended the Board approve the application and grant hardship status to The Gas Station Enterprise, LLC. Vice-Chairman Hull so moved and Mr. Geyer seconded. A vote was taken and all members voted in the affirmative. The motion passed.

Claim # 16065-0001/03/25/96, Owner – Lois Jeffers

Ms. Richmond said that Lois Jeffers and her deceased husband are the responsible persons for a release that was discovered in 1996 at 89 South Main Street in Fredericktown, Ohio. She said, although the site was sold in March of 2007, Mrs. Jeffers has continued the corrective actions at the site. This is her seventh request for hardship status.

Ms. Richmond said that, to date, the Fund has reimbursed \$258,000 for corrective actions for this release. She said, although there are no claims currently pending review, the cost of corrective action work expected to be conducted over the next 12 months is estimated to be \$125,000.

Ms. Richmond said that Mr. Jeffers passed away in June 2011. She said Mrs. Jeffers is retired and based on her application, her only source of income is her pension and social security, which is a little less than \$23,000 annually. She said this is slightly less than her reported household living expenses. She stated that, based upon the U.S. EPA financial capacity test, Mrs. Jeffers is unable to self-finance the anticipated corrective action costs.

Ms. Richmond recommended the Board approve the application and grant hardship status to Mrs. Jeffers. Vice-Chairman Hull so moved and Mr. Geyer seconded. A vote was taken and all members voted in the affirmative. The motion passed.

Claim # 16697-0001/05/28/93, Owner – Estate of Shirley Cira

Ms. Richmond said Shirley Cira is the responsible person for a 1993 release at 5018 County Road 313 in Rawson, Ohio. She said that Ms. Cira is deceased and the corrective action work is being continued by her estate. Ms. Richmond said James Cira is a trustee for Ms. Cira's estate and he submitted the hardship application on behalf of the estate. This is the fourth request submitted on behalf of the estate.

Ms. Richmond stated that, to date, the Fund has reimbursed about \$131,000 for corrective action costs for this release. She said, although there are no claims currently pending review, a cost pre-approval request in the amount of \$127,000 has been granted for a soil removal RAP (remedial action plan).

Ms. Richmond said, based on the application, the estate's assets, which total \$18,000, and the U.S. EPA financial capacity test, the estate does not have adequate cash flow or the ability to carry additional debt to cover the anticipated costs of corrective action.

Ms. Richmond recommended the Board approve the application and grant hardship status to the estate. Vice-Chairman Hull so moved and Mr. Bryant seconded. A vote was taken and all members voted in the affirmative. The motion passed.

Claim # 22741-0001/02/05/14, Owner – Route 53 Service, LLC

Ms. Richmond said Route 53 Service, LLC is the responsible party for a release in February 2014 at 8910 South State Route 53 in McCutchenville, Ohio. This is the fourth request for hardship status.

Ms. Richmond stated that, to date, the Fund has reimbursed \$321,600 for corrective action costs for this release. She said, although no claims are currently pending review, the cost of corrective action work expected to be conducted over the next 12 months is estimated to be \$195,000. She commented that there is a third-party eligibility application that is currently being reviewed for this release site.

Ms. Richmond said that Route 53 Service, LLC purchased the facility in October of 2012 and the station was closed from February 2014 until December of 2015. She said the IRS tax forms submitted with the application report net income totaling \$27,000. She said that, based on the information provided in the hardship application, the U.S. EPA Financial Capacity test estimates a less than 50% probability that Route 53 Service, LLC can afford \$195,000 in corrective actions costs.

Ms. Richmond recommended the Board approve the application and grant hardship status to Route 53 Service, LLC. Vice-Chairman Hull so moved and Mr. Hills seconded. A vote was taken and all members voted in the affirmative. The motion passed.

Certificates of Coverage – Ratifications:

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

Ms. Richmond said the lists behind Tabs 8 and 9 are listings of facilities that, since the June Board meeting, had been issued or denied a program year 2016 or 2017 Certificate of Coverage.

Ms. Richmond said the process used to review the fee applications and issue or deny a Certificate of Coverage includes a review for completeness to determine full payment was received; financial responsibility for the deductible has been demonstrated; and the owner has certified with his signature that he is in compliance with the State Fire Marshal's rules for the operation and maintenance of petroleum underground storage tanks. She said, if these requirements are met and if the tanks existed in previous years, a Certificate for the subject tanks has been issued to the owner in at least one of the prior two years, then a Certificate of Coverage is issued.

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

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

Ms. Richmond requested the Board ratify her actions with respect to the issuance of the 2016 program year Certificates of Coverage for the 54 facilities included on the list behind Tab 8.

Vice-Chairman Hull moved to ratify the issuance of the 2016 Certificates of Coverage for the facilities listed. Mr. Hills seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Richmond requested the Board ratify her actions with respect to the denial of the 2016 program year Certificates of Coverage for the 21 tanks located at eight facilities included on the list behind the Tab 8 green divider page.

Vice-Chairman Hull moved to ratify the denial of the 2016 Certificates of Coverage that were listed. Mr. Geyer seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Richmond requested the Board ratify her actions with respect to the issuance of the 2017 program year Certificates of Coverage for the 2,450 owners of 14,507 tanks included on the list behind Tab 9.

Vice-Chairman Hull moved to ratify the issuance of the 2017 Certificates of Coverage for the facilities listed. Mr. Bryant seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Richmond stated that there had been no denial of certificates for the 2017 program year.

Executive Session:

Chairman Rocco requested a motion to enter into executive session with counsel pursuant to Ohio Revised Code 121.22(G)(3) to discuss matters of pending or imminent court action. Vice-Chairman Hull so moved. Mayor Falconi seconded. Chairman Rocco called for a roll call. The following members voted in the affirmative: Messrs. Bryant, Falconi, Geyer, Hills, Hull, Pisula, Stephenson, and Rocco. There were no nays. The motion passed. Chairman Rocco requested to be recused from the executive session and the meeting was turned over to Vice-Chairman Hull.

Reconvene Meeting

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

Confirm Next Meeting and Adjourn:

Chairman Rocco said that the next Board meeting will be held on Wednesday, November 29, 2017, at 10:00 a.m. The Finance Committee will be meeting at 9:00 a.m. prior to the Board meeting to discuss annual per-tank fee and deductible amounts for the 2018 program year. He noted that the meetings will be held at the Board's new office location at 4151 Executive Parkway, Suite 350, in Westerville, Ohio.

Mr. Hills made a motion to adjourn the meeting and Mr. Pisula seconded. All members were in favor.