



Petroleum Underground Storage Tank Release Compensation Board

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MINUTES OF THE 181st MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD September 11, 2019

BOARD MEMBERS IN ATTENDANCE

Jim Rocco
John Hull
Steve Bergman
Don Bryant
Ron Falconi
Stephen Hightower II
Tom Stephenson

EX-OFFICIO MEMBERS IN ATTENDANCE

Verne Ord, representing Director Sheryl Creed Maxfield, Ohio Department of Commerce
Donna Waggener, representing Director Laurie Stevenson, Ohio Environmental Protection Agency
Jonathan Azoff, representing Robert Sprague, State Treasurer of Ohio

OTHERS IN ATTENDANCE

Starr Richmond	Executive Director, PUSTRCB
Madelin Esquivel	Assistant Director, PUSTRCB
Don Leasor	Chief Fiscal Officer, PUSTRCB
Rick Trippel	Claims Supervisor, PUSTRCB
Jonathan Maneval	Executive Assistant, PUSTRCB
Dave Gram	Claims Analyst, PUSTRCB
Cindy Knight	Senior Accounts Coordinator, PUSTRCB
John Hickey	Fiscal Specialist, PUSTRCB
Howard Silver	Hearing Officer
Leigh Bayer	Assistant Attorney General
Chris Smyke	OPMCA
Dan Adams	ATC Group Services LLC
Jodi Handlin	BJAAM Environmental, Inc.

Minutes submitted by:


Jonathan Maneval
Executive Assistant

Call to Order:

Chairman Rocco convened the one hundred eighty-first meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, September 11, 2019.

The following members were in attendance: Jim Rocco; Steve Bergman; Don Bryant; Ron Falconi; Stephen Hightower II; John Hull; Tom Stephenson; Verne Ord, representing Director Sheryl Creed Maxfield, Ohio Department of Commerce; Donna Waggener, representing Director Laurie Stevenson, Ohio Environmental Protection Agency; and Jonathan Azoff, representing Robert Sprague, State Treasurer of Ohio.

The following members were not in attendance: Robert Cantrell and Scott Fleming.

Chairman Rocco announced that he, Scott Fleming, and Steve Bergman had been reappointed by Governor DeWine to serve on the Board for another three-year term. He noted that all seats on the Board are currently filled.

2020 Meeting Dates

Chairman Rocco set the following meeting dates for the 2020 calendar year: January 8, March 11, June 10, September 9, and November 18, 2020. All meetings will begin at 10:00 a.m.

Minutes:

Chairman Rocco asked if there were any comments or questions, regarding the minutes from the June 12, 2019 Board meeting and there were none. Mr. Ord moved to approve the minutes. Mr. Bryant seconded. A vote was taken and the following members voted in the affirmative: Ms. Waggoner and Messrs. Rocco, Bergman, Bryant, Hightower, Hull, Stephenson, Ord, and Azoff. Mayor Falconi abstained. The minutes were approved as presented.

BUSTR Report:

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

Mr. Ord reported that Kelly Snedegar was hired as BUSTR's records management officer and noted she replaced Nancy Caldwell who retired in April. He commented that Ms. Snedegar previously worked in the records management section as a temporary and intermittent employee and they are happy to have her back.

Mr. Ord reported that the responsible party search program for the previous year had been completed and there is about \$33,000 in federal money for the project for the current year. He commented that the funding is lower than in the past and noted that their focus is to research key requests as they are being received.

Mr. Ord reported that 83 facilities with BUSTR regulated releases are involved in the Abandoned Gas Station Cleanup Grant Program. He pointed out that the report indicates that 82 facilities are involved in the program, but another facility had been added since the report was submitted. He said that around

\$18 million of the \$30 million allocated for the project had been awarded and that, to date, cleanup has been completed at 20 properties.

Mr. Ord. stated that the LUST (leaking underground storage tank) federal grant monies to operate the environmental side of the program had been received and the program is in its second year. He said that \$1.6 million in UST grant monies had been received for the release prevention program. He noted that additional moneys to operate the BUSTR program come from the operating fund.

Mr. Ord said that BUSTR staff provided a presentation concerning the current underground storage tank (UST) operational compliance requirements at the Department of Agriculture. He said that 51 individuals attended the training, including county commissioners and government employees from taxation and weights and measures.

Mr. Ord reported that the five-year review of the Revolving Loan Fund rule was completed. He explained that the rule must be maintained because of the statute. He noted that, since the creation of the Revolving Loan Fund six or seven years ago, no applications for funding have been received. He added that there is no money currently in the fund to operate it since there have been no applicants. He said, in the future, he expects a statutory change that will do away with the program.

Mr. Ord said that the operational compliance statistics report required by the U.S. Environmental Protection Agency (U.S. EPA) was successfully generated from the OTTER (Ohio Tank Tracking & Environmental Regulations) database. He said that tests are being run for additional reporting due to be submitted at the end of the month.

Mr. Ord said that BUSTR is projecting 450 no further actions (NFA's) to be issued this year. He commented that the work plan, which is part of the federal grant, expects 600 NFA's to be issued but noted that Region 5 recognizes that this is an unreasonable number given the releases as they are today.

Mr. Ord reported that there are currently 21,089 registered tanks. He stated that the number of registered tanks and the number of registered facilities continues to decrease gradually. He said the number of NFA's issued through the BUSTR program total 30,761. He said there are currently around 5,200 – 5,300 active release incidents that are being investigated and remediated.

Chairman Rocco asked if any major problems are being seen as a result of the monthly walkthrough inspection requirements of BUSTR's new rules. Mr. Ord said generally, for the regional marketers, the inspectors are finding no issues. However, for a significant number of single-station owners, the inspectors are issuing violations due to lack of documentation. He said the inspectors then walk the tank owners through the process and direct them to the necessary forms.

Chairman Rocco said, for the small tank owners, the first time they are likely receiving information concerning the monthly walkthrough requirement, is when the inspector arrives at their station. He then recommended that the BUSTR and Board staff work to develop an information bulletin concerning the requirements to be included in the Board's newsletter.

Vice-Chairman Hull asked if there was a program or provision that allowed an owner to request a voluntary consult or inspection, which would not generate a violation, and Mr. Ord explained that there

is no such provision and their obligations under the U.S. EPA require any operational compliance violation observed to be cited. He said that since there are only nine field inspectors it would be extremely difficult to meet with each owner, if BUSTR were to be flooded with requests for voluntary inspections. Vice-Chairman Hull commented that the stigma of a violation might have implications on a local or state basis that are not fully appreciated. Mr. Ord noted that owners are issued a Request for Underground Storage Tank Information, which provides them with 30 days to come into compliance before any Notice of Violation is issued.

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 10, 2019, the unobligated account balance is \$28.8 million. He said this amount includes \$12.8 million in STAR Ohio and the custodial account, and the \$16 million invested in U.S. treasuries and U.S. agency callable bonds. He said the obligated account balance for the payment of claims is \$7.6 million.

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

Mr. Leasor reported that, as of July 31, expenses should be about 8.3% of the amounts budgeted for fiscal year 2020. Mr. Leasor said the claims expense for the month of July was \$546,000 and approximately \$1,390,000 had been paid for claims since July 1, 2019. He said this is 15.5% of the \$9 million obligated by the Board for the payment of claims for fiscal year 2020 and noted the amount is on target for where it should be at this point in the fiscal year.

Mr. Leasor said the operating expenses for the month of July were about \$153,000. He pointed out that there was no rent expenditure in the month of July. He commented that the August lease payment would typically be paid in July, but it was paid in the beginning of August. He said that the legal and professional expense was 12.4% of the amount budgeted. He explained that this includes fees for the Assistant Attorney General services from the 4th quarter of the previous fiscal year that were paid in the month of July. He said all other expenses are at or below where they should be at this time in the fiscal year.

Fee Statement Statistics

Mr. Leasor said as of September 10, 2019, the per-tank fees collected for the current 2019 program year were approximately \$8 million, which represents 96% of the amount billed. He said that between July 1, 2019, and September 10, 2019, approximately \$74,800 was collected for prior years' fees, net of refunds.

Mr. Leasor said, for the 2019 program year, 15,400 tanks were billed at the standard deductible (\$55,000) per-tank fee and about 5,400 tanks were billed at the reduced deductible (\$11,000) per-tank fee. Mr. Leasor said as of September 10, 2019, the fees had been paid at the standard deductible rate

for 14,400 tanks and at the reduced deductible rate for about 5,300 tanks. He said fees for a total of 19,757 tanks had been paid by 2,996 owners. He said this compares to fees being paid for 19,792 tanks by 3,006 owners for the same period of time in the prior year.

Mr. Leasor said, for the program year ended June 30, 2019, fees had been paid for a total of 20,425 tanks by 3,126 owners.

Mr. Leasor said the \$8.1 million collected to date represents 95.8% of the \$8.4 million budgeted for the 2019 program year. He said so far, for program year 2019, 97.3% of the fees had been received for the 20,300 tanks budgeted.

Compliance and Fee Assessment Report:

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

Ms. Esquivel directed members to the program year 2018 column of the report and explained that she would first provide a summary of the compliance and fee assessment information presented for the program year ending June 30, 2019. She said for program year 2018, refunds totaling \$95,305 had been paid and a total of \$35,270 was used to offset unpaid prior years' fees. She said these combined amounts total \$130,575. She noted the compliance section's goal set for program year 2018 was to process \$225,000 in refunds.

Ms. Esquivel reported that as of June 30, 2019, the amount collected by the Attorney General's Office and Special Counsel less the collection costs was \$176,944. She said that 16 accounts totaling \$64,220 were certified to the Attorney General's Office for collection during program year 2018. She pointed out that this amount was lower than previous years and explained that this was because the unpaid program year 2018 fees were not certified for collection until after July 1, 2019. She said for the 2018 program year, 3,276 applications for certificates of coverage were mailed and 3,057 certificates were issued.

Ms. Esquivel reported that as of August 31, 2019, refunds totaling \$1,200 had been paid to four owners for program year 2019 and noted the amount of pending refunds totals \$1,415,004. She said for program year 2019 that \$1,650 in refunds was used to offset outstanding fees that had been identified. She said as of August 31, 2019, the fees collected by the Attorney General's Office and Special Counsel less collection costs totaled \$5,996. She said that 130 accounts totaling \$459,300 were certified to the Attorney General's Office for collection since July 1, 2019. She said that these fees represent the program year 2018 fees that were unpaid.

Ms. Esquivel said there are 13 Orders Pursuant to Law currently under appeal and information to support the objection is expected for ten of these. She said information has been received and is under review for the three other appeals. She said that no Determinations to Deny a Certificate of Coverage were under appeal.

Ms. Esquivel stated that two Ability to Pay Applications are currently 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 3,254 Applications for a Certificate of Coverage were mailed as part of the annual mailing, and as of September 3, 2019, a total of 1,976 Certificates of Coverage have been issued for program year 2019. She said there are 1,007 Applications for Certificates of Coverage currently being processed, five unresolved Pending Denials, and two unresolved Determinations to Deny a Certificate of Coverage.

Ms. Esquivel stated that there are 27 uncashed refund checks totaling \$24,318. She said there are seven owners with pending refunds totaling \$9,590 to whom letters have been sent notifying them that more information is needed before their refunds may be issued. She said there are 35 owners with pending refunds totaling \$70,405 for which information had been requested, but no responses have been received.

Chairman Rocco said that of the 3,254 Applications for a Certificate of Coverage that were mailed out, it appears that about 250 Applications have not been received. He questioned whether these represent owners that do not respond. Ms. Esquivel confirmed that the majority are non-responsive owners that do not pay their fees. She said that eventually their accounts will be certified for collection. Mr. Ord commented that this number is close to the number of owners that do not pay their tank registration fees and probably relates to the number of facilities with out-of-service tanks where sometimes the owner cannot be located.

Claims Reports:

Chairman Rocco called on Rick Trippel, Claims Supervisor, to present the claims reports.

Mr. Trippel said as of September 3, 2019, the total maximum liability of in-house open claims is \$32.5 million. He said that using the claim payout ratio of 76%, which is the average ratio of the past five years, the actual anticipated claim liability of unpaid in-house claims is about \$24.7 million.

Mr. Trippel reported that, as of September 3, 2019, a total of 1,659 claims with a total face value above the deductible amount were pending review. He noted that claims received in the month of June 2019 are currently being reviewed by the staff.

Mr. Trippel stated that, as of September 3, 2019, a total of 27 claim settlement determinations were under appeal. He said that this number is higher than average due to 16 claim determinations for one release site being appealed. He said if this group of related appeals were excluded, the number of determinations under appeal would total 11, which is slightly lower than the number typically under appeal.

Mr. Trippel reported that, during the 2018 program year, 623 claim applications were received and 447 claims were either settled or closed. He said the average per claim payout was about \$11,271 and the average claim payout was 71.9% of the net value (face value – deductible). He noted that the average percentage of disallowed costs at 23.8%. He said the payout amount and payout ratio are lower than

the previous few years, and the percentage of disallowed is higher. He explained that the change in these statistics is a result of the 16 claims that he had mentioned were currently under appeal. He said that if this group of claims were not included, the statistics would be similar to the previous year with an average per claim payout of \$11,722 and an average claim payout ratio of 82.8%. He reported that, in the months of July and August, 94 claims were received and 97 claims were either settled or closed. He said the average per claim payout was \$18,459.

Chairman Rocco asked if the average percentage of disallowed costs is increasing and Mr. Trippel explained that the increase in program year 2018 was predominately due to a unique situation where 100% of the costs for 16 claims were disallowed. He said if it were not for these 16 claims, the percentage of disallowed costs would be 15.1%, which is in line with the average percentage of disallowed costs in the previous year.

Mr. Trippel said that, during the 2018 program year, 91 eligibility applications were received and that 58 eligibility determinations were issued. He said of these eligibility determinations, 37 were approved and [21] were denied. He said the denied applications were primarily denied for no release being demonstrated or no corrective actions being required.

Mr. Trippel said that, in the months of July and August, 21 eligibility applications were received and that 27 eligibility determinations were issued. He said currently, 56 applications are pending review and three determinations are under appeal.

Mr. Trippel reported that during program year 2018, a total of [141] requests for cost pre-approval had been received and 132 cost pre-approval notifications had been issued. He said that during the months of July and August, [18] requests for cost pre-approval had been received and [25] cost pre-approval notifications had been issued. He said currently, [34] cost pre-approval requests are pending review.

Finance Committee Report:

Chairman Rocco said that prior to the Board meeting, the Finance Committee met to review the Fund's five-year financial projections and to discuss the annual per-tank fee and deductible amounts for the upcoming program year. He said the committee reviewed pro-forma operating statements based on an assumption that annual claim payments would total \$9 million. He commented that \$9 million is about \$2 million more than what has been paid out in recent years. He said with making no changes to the per-tank fees or deductible amounts, the five-year projection indicates there will be sufficient funds to cover all estimated claim liabilities and operating expenses. In addition, there will be a reasonable reserve in the unobligated account to cover any unexpected expenses.

Chairman Rocco said that given the financial shape of the Fund, the committee is recommending no changes to the fees or deductibles for the upcoming year. He then requested a motion to adopt the recommendation of the Finance Committee to make no changes to the per-tank fees or the deductibles amounts for program year 2020. Vice-Chairman Hull so moved and Mayor Falconi seconded. The Chairman asked if there were any questions and there were none. A vote was taken and all were in favor. The motion passed.

Chairman Rocco said the committee also discussed the Board's investments during their meeting. He explained that the committee has been considering moving moneys into another investment product recommended by the Treasurer's Office, which may yield a higher rate of interest income. He said there was a question of whether the Board is able to participate in the program and the Assistant Attorney General provided an opinion, which concluded that the Board does have the option to participate in the program. He said there is now a question whether the types of investments utilized by the program are acceptable from a statutory perspective.

Mr. Azoff commented that the STAR Separately Managed Accounts (STAR SMA) program was launched in the previous year and is designed for government entities that carry a large balance relative to their operating expenses. He said it gives those entities a vehicle to earn slightly higher interest earnings on funds that are not needed for their operating expenses. He said it could be a good option for the Board and the committee wants to ensure it will work under the existing investment policy. Chairman Rocco stated that the interest rate in STAR Ohio is dropping and the hope is that the program will allow the current rates to be maintained. He said the committee would meet again with the intention of proposing any changes to the investments at the November meeting.

Rule Committee Report

Chairman Rocco called upon Starr Richmond, Executive Director, to present the final version of the proposed rule changes in accordance with the mandatory five-year rule review process. Ms. Richmond stated that the Rules Committee had met on several occasions over the past year to review all of the Board's rules. The following summarizes the proposed rule changes:

No change rules:

After reviewing the following rules, the committee proposed no changes:

- 3737-1-04.1 Coverage reinstatement.
- 3737-1-05 Supplemental petroleum underground storage tank financial assurance fee.
- 3737-1-06 The deductible and the reduced deductible.
- 3737-1-10 Financial audits.
- 3737-1-11 Technical audits.
- 3737-1-13 Reimbursement application review.
- 3737-1-17 Petroleum underground storage tank linked deposit program.
- 3737-1-20 Fees for materials and services.
- 3737-1-21 Obligated account.
- 3737-1-22 Subrogation.
- 3737-1-23 Access and maintenance of confidential personal information.

Minor change rules:

The committee recommended minor amendments to ten of the Board's rules. The recommended changes included grammar corrections, and text edits to provide additional clarification and make the rules easier to read and understand. Additional amendments were made in order to maintain consistency throughout the rules. The following rules included minor changes:

- 3737-1-01 Notice of administrative rules hearing.
- 3737-1-02 Public meetings.
- 3737-1-03 Definitions.
- 3737-1-07 Establishing fund eligibility for corrective action costs.
- 3737-1-08 Disbursement of the financial assurance fund.
- 3737-1-12.1 Mandatory and voluntary pre-approval of corrective action costs.
- 3737-1-15 Modifying the deductible or the reduced deductible.
- 3737-1-16 Third-party claims.
- 3737-1-18 Certificate of coverage.
- 3737-1-19 Establishing fund eligibility for third-party claims.

Substantial change rules:

The committee proposed substantial changes to the remaining rules. The following is a brief summary of the changes recommended by the committee:

- 3737-1-04 Annual petroleum underground storage tank financial assurance fee, certification of compliance, and financial responsibility.
- 3737-1-04.2 Baseline environmental site assessment.

Rule 3737-1-04.2 was adopted to provide the purchaser of an existing UST system with the option of performing a baseline environmental site assessment in lieu of remitting any fees that were outstanding at the time of transfer. However, since the rule's adoption in 2014, this option has not been chosen. Therefore, the committee proposed to rescind rule 3737-1-04.2. The change to paragraph (F)(2)(b) of rule 3737-1-04 addresses the rescission of rule 3737-1-04.2.

- 3737-1-09 Limitations of fund coverage.

The committee proposed to amend rule 3737-1-09 to clarify that markup on charges for utilities or on costs for the transportation of soil and backfill materials is not reimbursable. The proposed new paragraph (A)(18) explains that if a responsible person receives payment for corrective actions from any other party, the responsible person cannot also receive payment from the Fund for those costs.

- 3737-1-09.1 Inclusions of fund coverage.

The committee proposed to amend the rule to indicate that a markup up to 10% on costs for drilling services, soil excavation services, utility locating services, and vacuum truck services is reimbursable. The proposed new paragraph (A)(3) clarifies that usual, customary, and reasonable legal costs incurred by the responsible person for the preparation, review, or recording of an environmental covenant are reimbursable.

- 3737-1-12 Application for reimbursement.

The committee proposed to amend the rule to change the deadline for submitting an application for reimbursement for immediate corrective action costs to one year from the date the immediate corrective action report is required to be submitted to the fire marshal. This proposed change makes the filing deadline consistent with the claim filing deadlines of the other program tasks described in the rule.

Chairman Rocco said the plan is to file the rule package so that the public hearing will be conducted prior to the Board's January meeting. He said as long as there no issues throughout the process, the Board would then adopt the rules at the March meeting and the amended rules would become effective on April 1, 2020. He asked if there were any questions or discussion concerning the rule actions proposed by the committee and there were none.

The Chairman requested a motion to file rules 3737-1-04.1, 3737-1-05, 3737-1-06, 3737-1-10, 3737-1-11, 3737-1-13, 3737-1-17, 3737-1-20, 3737-1-21, 3737-1-22, and 3737-1-23 as five-year review no-change rules with the Joint Committee on Agency Rule Review (JCARR), Legislative Service Commission (LSC), and the Secretary of State. Vice-Chairman Hull so moved and Mr. Bergman seconded. A vote was taken and all members were in favor. The motion passed.

The Chairman requested a motion to accept the changes proposed by the Rules Committee to rules 3737-1-01, 3737-1-02, 3737-1-03, 3737-1-04, 3737-1-07, 3737-1-08, 3737-1-09, 3737-1-09.1, 3737-1-12, 3737-1-12.1, 3737-1-15, 3737-1-16, 3737-1-18, and 3737-1-19, and to file the proposed amended rules with JCARR, LSC, and the Secretary of State. Vice-Chairman Hull so moved. Mr. Bryant seconded. A vote was taken and all members were in favor. The motion passed.

The Chairman requested a motion to file the rescission of rule 3737-1-04.2 with JCARR, LSC, and the Secretary of State. Vice-Chairman Hull so moved and Mr. Ord seconded. A vote was taken and all members were in favor. The motion passed.

New Business:

Administrative Appeal

Chairman Rocco called upon Howard Silver, the Board's hearing officer, to present the Report and Recommendation regarding the appeal of the claim settlement determination issued to Winner's One Stop, LLC

**Claim # 21176-0001/09/29/15-A, Owner – Winner's One Stop, LLC
147 West Sandusky Street, Mechanicsburg**

Hearing Officer Silver said that Winner's One Stop, LLC operates a small market that sells gasoline and diesel fuel. He said that in 2015, Winner's One Stop entered into an agreement with Marathon Oil to replace a 2,000-gallon diesel tank. He explained that during the replacement activities, soil samples were taken, and on September 29, 2015, laboratory analysis reported contamination at the site above action levels. He said these analytical results above action levels triggered certain corrective action tasks required by the fire marshal.

Mr. Silver said the appeal being presented concerns a claim for reimbursement filed by Winner's One Stop, LLC seeking reimbursement for corrective action costs from the Financial Assurance Fund. He said the claim included an invoice for conducting a Tier 1 Source Investigation, which the fire marshal's rules establish was to be completed by December 29, 2015. He said that since the fire marshal's task completion date was December 29, 2015, a reimbursement claim for the related costs

was to be filed within one year, or by December 29, 2016. He said the claim was received on February 9, 2018, after the deadline had passed.

Mr. Silver said other invoices in the claim were for Tier 1 Delineation activities, which had a completion date of September 29, 2016. He said the claim submission deadline for the submittal of these costs was September 29, 2017. He reiterated that the claim had been submitted on February 9, 2018, after the deadline had passed.

Mr. Silver said that on April 30, 2018, the Director of the Financial Assurance Fund issued a letter indicating that reimbursement for the invoices was not authorized because they were untimely submitted for reimbursement. He said an appeal was filed and a hearing was conducted on June 5, 2019. He said that John Winner, a member of Winner's One Stop, LLC, provided testimony at the hearing and in his statement, explained that he believed BUSTR should have notified him that information was required to be submitted prior to the applicable deadline rather than after the deadline was missed. Mr. Winner also expressed that the consultants and professionals hired to assist him had failed to advise him of the things that needed to be done.

Mr. Silver stated that corrective action completion dates are calculated based on the fire marshal's rules and the Board's rules set forth deadlines for the filing of claim applications. He said that he found that the Director's determination was correct and he recommended that the action of the Director be upheld.

Chairman Rocco commented that claim filing deadlines have often been a tough issue to address but noted that the Board's rules are very clear and there simply is no exception for these types of cases. He added that a year is a long time to file a claim for reimbursement.

Mr. Bergman questioned whether a decision was issued following the appeal hearing. Mr. Silver stated that his report and recommendation was filed on July 5, 2019, and in the report, he found that the Director had acted lawfully. Mayor Falconi asked when the claim application should have been filed. Mr. Silver explained that some of the costs were to be filed by December 29, 2016, and the other costs were due to be filed by September 29, 2017. He said that since the claim was filed on February 9, 2018, both deadlines were missed.

Chairman Rocco asked if there were any other questions and Vice-Chairman Hull asked what action was needed to adopt the hearing officer's recommendation. The Chairman said he would need a motion to adopt the findings of facts, conclusions of law, and the recommendation of the hearing officer that the April 30, 2018 settlement determination issued by the Director of the Financial Assurance Fund to Winner's One Stop, LLC comprises valid state action as a matter of fact and law and that it be upheld. Vice-Chairman Hull so moved and Mr. Bryant seconded. The Chairman called for a roll call. The following members voted in the affirmative: Ms. Waggener and Messrs. Rocco, Bergman, Bryant, Falconi, Hull, Hightower, Stephenson, Ord, and Azoff. There were no nays. The motion passed.

Hardship Applications

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

Ms. Richmond stated that since the Board meeting materials were emailed to the members, one new hardship application was received and was being presented. She noted that the application from Gas Station Enterprises was taken off the agenda and it would be presented at the November Board meeting.

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 two-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 # 15303-0001/06/24/14, Owner – Rohr's Auto Service

Ms. Richmond said that Robert Rohr is the responsible person for a 2014 release at 112 First Street in Massillon, Ohio. She said this is his fifth request for hardship status. She said to date, the Fund has reimbursed \$136,700 for corrective action costs for this release and there are no claims in house pending review. She said the corrective action costs for the next 12 months are estimated to be \$65,000.

Ms. Richmond stated that after taking operating losses for several years, Mr. Rohr closed the business in 2013 and sold a portion of the assets to pay outstanding bills. She said that Mr. Rohr reported that he has been unable to sell the property until a no further action determination is issued by the fire marshal, and he has taken two loans on the equity in his house to continue to pay for the upkeep and property taxes of the facility. She said his sources of income are \$20,400 annually from social security and \$18,000 annually from rent on a commercial property for a combined total annual income of less than \$40,000. She said his living expenses are substantially higher at \$58,000.

Ms. Richmond said, because the estimated \$65,000 of corrective action costs far exceeds his reported annual income, she recommended the Board approve the application and grant hardship status to Mr. Rohr. Vice-Chairman Hull so moved and Mr. Ord 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. She noted it is her ninth request for hardship status.

Ms. Richmond said that, to date, the Fund has reimbursed over \$400,000 for corrective actions for this release. She said, there is one \$10,000 claim currently pending review and the cost of corrective corrective action work expected to be conducted over the next 12 months is estimated at \$100,000.

Ms. Richmond said Mr. Jeffers passed away in June 2011. She said Mrs. Jeffers is retired and her only source of income is her social security benefits, which are slightly higher than her reported household living expenses. She stated that Mrs. Jeffers has assets totaling \$9,800 in a checking account, savings account, and retirement account. She said that based upon the estimate of \$100,000 for corrective action costs for the next 12 months exceeding her annual income, she recommended the Board approve the application and grant hardship status to Mrs. Jeffers. Vice-Chairman Hull so moved and Mr. Ord seconded. A vote was taken and all members voted in the affirmative. The motion passed.

Claim # 18344-0001/10/26/98, Owner – Red Stripe Associates, LLC

Ms. Richmond said Red Stripe Associates, LLC is the responsible party for a release that was discovered in 1998 at 50708 National Road in Saint Clairsville, Ohio. She said Gary Glessner submitted the application requesting the Board grant hardship status to the LLC. She noted this was Red Stripe Associates' 18th request for hardship status.

Ms. Richmond stated that to date, the Fund has reimbursed about \$273,000 for corrective action costs for this release and there are no claims in house pending review. She said the corrective action costs for the next 12 months are estimated to be \$35,000.

Ms. Richmond said the property and business were sold in 2008 and Red Stripe Associates provided financing for the sale. She said Red Stripe Associates received the final payment in November 2013 and those moneys were then used to pay the remaining mortgage on the property. She said that currently, Red Stripe Associates is not generating additional funds, and therefore, it is not in a position where it can acquire financing or self-finance ongoing corrective actions. She then recommended the Board approve the application and grant hardship status to Red Stripe Associates, LLC. Vice-Chairman Hull so moved and Mr. Bryant 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 9, 10, and 11 are listings of facilities that had been issued or denied a program year 2017, 2018, or 2019 Certificate of Coverage since the last meeting in June.

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 2017 program year Certificates of Coverage for the five facilities 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. Ord seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Richmond stated that no determinations denying a 2017 program year Certificate of Coverage were issued since the June meeting.

Ms. Richmond requested the Board ratify her actions with respect to the issuance of the 2018 program year Certificates of Coverage for the 55 owners of the 117 facilities included on the list behind Tab 10.

Vice-Chairman Hull moved to ratify the issuance of the 2018 Certificates of Coverage for the facilities listed. Mr. Ord 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 2018 program year Certificates of Coverage for the 101 tanks located at the 30 facilities on the list behind the Tab 10 green divider page.

Vice-Chairman Hull moved to ratify the denial of the 2018 Certificates of Coverage that were listed. Mayor Falconi 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 2019 program year Certificates of Coverage for the 2,128 owners of the 3,754 facilities included on the list behind Tab 11.

Vice-Chairman Hull moved to ratify the issuance of the 2019 Certificates of Coverage for the tanks listed. Mr. Ord 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 2019 program year Certificates of Coverage for the 28 tanks located at the 10 facilities on the list behind the Tab 11 green divider page.

Vice-Chairman Hull moved to ratify the denial of the 2019 Certificates of Coverage that were listed. Mayor Falconi seconded. A vote was taken and all members were in favor. The motion passed.

Executive Sessions:

Chairman Rocco stated that the Board would need to enter into two executive sessions; one concerning legal matters and the other concerning personnel matters. He explained that he would be requesting two motions for entering into the executive sessions.

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 and Mr. Ord seconded. The Chairman called for a roll call. The following members voted in the affirmative: Ms. Waggener and Messrs. Rocco, Bergman, Bryant, Falconi, Hull, Hightower, Stephenson, Ord, and Azoff. There were no nays. The motion passed. Chairman Rocco stated that he would recuse himself from the executive session concerning the litigation.

Chairman Rocco then requested a motion to enter into executive session pursuant to Ohio Revised Code 121.22(G)(1) to discuss employment of personnel. Mayor Falconi so moved and Ms. Waggener seconded. The Chairman called for a roll call. The following members voted in the affirmative: Ms. Waggener and Messrs. Rocco, Bergman, Bryant, Falconi, Hull, Hightower, Stephenson, Ord, and Azoff. There were no nays. The motion passed.

Reconvene Meeting

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

Confirm Next Meeting and Adjourn:

Chairman Rocco said that the next Board meeting will be held on Wednesday, November 20, 2019, at 10:00 a.m. He said that the Finance Committee would be meeting at 9:00 a.m. prior to the Board meeting.

Mr. Hightower made a motion to adjourn the meeting and Mayor Falconi seconded. All members were in favor.

Note: Numbers in brackets [] were incorrectly stated at the meeting. The numbers as written reflect the correct numbers from the report materials provided at the meeting.