



# Petroleum Underground Storage Tank Release Compensation Board

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## MINUTES OF THE 135th MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD January 19, 2011

### 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 David Goodman, Ohio Department of Commerce  
Chris Geyer, representing Director Scott J. Nally, 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
Jonathan Maneval	Accounts Receivable Analyst, PUSTRCB
Nicole Johnson	Assurability Coordinator, PUSTRCB
Homayoun Sharifi	Environmental Claims Analyst, PUSTRCB
Cheryl Hawkinson	Assistant Attorney General
Sally Scheuermann	Speedway SuperAmerica LLC
Robert Hazel	Schneider Downs
Jay Meglich	Schneider Downs
Andy Shrock	Parsons

Minutes submitted by:

Ellen S. Mitton  
Administrative Coordinator

### **Call To Order:**

Chairman Rocco convened the one hundred thirty-fifth meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, January 11, 2011. 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 David Goodman, Ohio Department of Commerce; and, Christopher Geyer, representing Director Scott J. Nally, Ohio Environmental Protection Agency.

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

### **BUSTR Report:**

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

Mr. Thompson said BUSTR recently hired Mr. Scott Sigler to serve as a second Corrective Action Supervisor. Mr. Sigler will be a counterpart to Mr. Kelly Gill. Mr. Thompson said the state had been divided into two sections with each supervisor covering their respective section.

Mr. Thompson said BUSTR interviewed candidates to serve as supervisors to the UST inspectors throughout the state. He said those hired would report to the manager of the UST release prevention section, Mr. Steve Krichbaum.

Mr. Thompson said the Domenici-Barton Energy Policy Act of 2005 requires states with authorized UST programs to promulgate rules addressing, among other things, UST-release prevention (secondary containment) and prohibitions on delivery of petroleum products to UST systems in violation of UST laws. Mr. Thompson stated that BUSTR provided the proposed rules to stakeholders utilizing the Governor's "e-notification" process, as well as the Limited Report on Comments. Mr. Thompson stated the Department of Commerce filed the rules with the Joint Committee on Agency Rule Review (JCARR) on November 24, 2010.

Mr. Thompson said on January 14, 2011, the Department of Commerce filed a "to be re-filed" letter with JCARR, which suspends JCARR's jurisdiction over the rules until the Department re-files the rules. He said this action was taken in order to address changes in the new administration and the JCARR membership, and to provide BUSTR and its stakeholders additional time to address general concerns regarding the rules.

Mr. Thompson said a public hearing was held on December 29, 2010. He said testimony received at the hearing as well as written comments received prior to the hearing would be considered before re-filing the rules with JCAAR.

Mr. Thompson added there is no specific timeframe set to re-file the rules. He said, however, in accordance with the timeframe provided to the US EPA, BUSTR expects the rules to become effective during the first quarter of 2011.

## **Financial Report:**

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

### ***October & November Financials***

Mr. Leasor stated the October and November financial statements were emailed to each member. He asked if there were any questions or concerns regarding these reports. Hearing none, Mr. Leasor began his report with the November financials.

Mr. Leasor said as of November 30, 2010 there was a little over \$2.2 million in the obligated account, which is set aside for fiscal year 2011 claim settlement payments. He said as of January 19, 2011, the amount in the obligated account is approximately \$4.6 million. Mr. Leasor said at the end of November the unobligated balance was a little over \$5.7 million; and, as of January 19, the unobligated balance is a little under \$2.2 million. Mr. Leasor said the change in the obligated and unobligated account balances is due to the transfer of \$3.5 million obligated at the November meeting for claims payments, bringing the total obligated for the fiscal year to \$8 million.

Mr. Leasor said the claims expense for November was approximately \$844,000; and, as of November 30, 2010, the amount reimbursed was about \$2.2 million. He said claims payments through November represent 24.7% of the \$9 million budgeted for claims; however, since only \$8 million had been obligated for claims payments, the current claims payments represent 27.8% of the actual funds obligated. Mr. Leasor said from July 1, 2010 through January 18, 2011, there had been \$3.4 million in claims payments, which is 42.5% of the \$8 million obligated for claim payments.

Mr. Leasor said approximately 98.3% of budgeted revenues had been collected as of November 30, 2010. He said as of January 12, 2011, approximately \$110,000 had been paid out in refunds this fiscal year. This is 44% of the \$250,000 goal set for the year.

He said the legal and professional line item is approximately 57.7% of the amount budgeted for fiscal year 2011 and includes the fourth quarter of fiscal year 2010 and the first quarter of fiscal year 2011 costs associated with the services of the Assistant Attorney General. Mr. Leasor said this also included fees assessed by the Attorney General's Revenue Recovery Section as collection fees, which were higher than anticipated due to special counsel fees. Mr. Leasor said the Attorney General's collection fee is 10% of the amount collected and these costs are passed on to the owner or operator. He said the special counsel fees are 33% of the total fees collected and these costs are not passed on to the owner or operator. Mr. Leasor added the legal and professional line item also includes costs for July through November 2010 for the I.T. consultant and payment for actuarial services associated with the claim liability study.

Mr. Leasor said the postage line item is approximately 74.5% of the budgeted amount and includes postage costs for the mailing of the annual fee statements, the Spring 2010 newsletter, and the issuance of Director's Orders. He noted that both the fee statements and the Director's Orders are mailed via certified mail as required by statute. Mr. Leasor said the postage line item is in line with prior years for the same time period.

Mr. Leasor said the salaries line item increased in both October and November. He said October increased due to a new assistant director joining the staff in September, and November is higher due to the annual sick leave pay out. Chairman Rocco said the salaries are within budget.

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

Mr. Leasor said the insurance claim associated with the water damage experienced in May totaled \$34,691 and the entire amount minus the \$500 deductible had been paid by the insurance company.

Mr. Leasor said one employee resigned in December 2010 and noted the position is currently being staffed with temporary personnel from an employment agency. He added the position had been offered to the temporary employee and she would become a full-time Board employee at the end of January 2011.

### ***Audit Report***

Mr. Leasor indicated that a draft copy of the Management's Discussion and Analysis and financial statements were located in the front of each Board member's book. Mr. Leasor noted that Mr. Jay Meglich and Mr. Rob Hazel from Schneider Downs were present at the meeting to address any concerns regarding the 2010 fiscal year audit.

Mr. Leasor briefly discussed the draft Management's Discussion and Analysis; Statements of Net Deficit; Statements of Revenues, Expenses and Changes in Net Deficit; Statements of Cash Flows; and Notes to Financial Statements for the years ended June 30, 2010 and 2009.

Mr. Leasor stated the report shows net income for this fiscal year at a little under \$7.5 million. He said this increase over the net income reported in the 2009 fiscal year is primarily due to the change in reserve for unpaid claims. He reported that as of June 30, 2010, the reserve for unpaid claims was \$37.7 million, which includes approximately \$2 million attributable to claims incurred but not reported. The reserve for unpaid claims decreased from fiscal year 2009 by a little under \$2.7 million as a result of claim reimbursements being paid at a rate greater than the increase in the ultimate estimated loss.

Mr. Leasor said the draft was provided to the auditors on January 14, 2011, and the final audit reports would be submitted to the State Auditor's Office on or before January 31, 2011. The auditors have not had the opportunity to complete their review of the draft. Chairman Rocco asked Jay Meglich of Schneider Downs if he had any additional comments.

Mr. Meglich said he expects Schneider Downs will issue an unqualified opinion on the financial statements. He stated historically there had been findings within the financial statements relating to management's ability to produce a detailed accounts receivable aging schedule. He said they had looked at that issue internally, and noted there had been significant improvement in that area; but are still discussing whether or not that finding should still be presented in a similar fashion.

Mr. Meglich said there had been two items identified as management comments. He said they are not financial statement issues, but relate to public information documentation within the office and access to personal information. Chairman Rocco called upon Mr. Leasor to discuss these findings and subsequent action taken by the Board.

Mr. Leasor said the first management comment resulted from the auditors noting that the office was not in compliance with the state's Public Records Policy requiring the Board to have an on-site posting of its' Public Records Policy. Mr. Leasor said upon the auditors providing notification of the non-compliance, a document in compliance with the state's Public Records Policy was promptly created and is now on display in the reception area.

Mr. Leasor said the other management comment addressed the protection of, and access to, sensitive, personal information as it related to tank owners. Mr. Leasor noted a policy had been drafted and, when finalized, would be added to the Board's Employee Handbook. He also said a new rule regarding access and maintenance of confidential personal information was in draft form to be discussed at the Board's Rule Committee Meeting to be held later in the day.

In response to Mr. Hightower's question, Mr. Leasor confirmed that tank owners' personal information is not available on the Board's website. Chairman Rocco added, as more tank owners' personal data may be made available, the staff would continue to carefully monitor the information and adhere to the policies set regarding online personal information.

Chairman Rocco suggested that each member, and specifically the members of the Finance Committee, take time to peruse the audit and, if there are questions or comments, please contact Mr. Leasor immediately. He stated the State Auditor had granted an extension until January 31, 2011; therefore, all feedback would need to be submitted to Ms. Richmond or Mr. Leasor by January 25, 2011. Mr. Leasor stated the audit would be filed timely and a copy of the final 2010 audit would be available to members of the Board at the next meeting.

### **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 1,622 in-house above deductible open claims is approximately \$28.6 million. Ms. Duann said using the average claim payout ratio of 70% the actual anticipated claim liability of unpaid in-house claims is about \$20 million. She stated that the dollar value of claim liability had not changed significantly over the past ten years; however, the number of claims pending review had increased at an average rate of 90 claims per year over the past ten years.

Ms. Duann said for the first six months of this program year, the Board received an average of 67 claim packages per month and settled or closed an average of 59 per month. She said we are now one half of the way through the program year and to date approximately \$3 million had been made in settlement determinations. Ms. Duann stated the current payoff percentage is 70.4%, which is slightly higher than previous years. She noted there would be no lump sum payments offered this program year.

Ms. Duann said the Board received a monthly average of four eligibility applications for the first six months of this program year, which was lower than usual, and an average of five eligibility applications were determined per month. She said currently there are 21 open eligibility applications to be determined.

Ms. Duann said from program year 2003 through program year 2009, the Fund approved eligibility for an average of 71 releases per year. She said in comparison, during the same seven-year time period, there had been an average of 134 Fund-eligible releases closed per year. Ms. Duann said that although more releases had been NFA'd and closed than had been granted eligibility each year, the number of claims submitted each year has not decreased in the past ten years, with more than 800 claim packages being received on average per year.

Ms. Duann said during the past six months the Board received 83 requests for cost pre-approval and issued 115 pre-approval notifications. Ms. Duann said there are currently 75 cost pre-approval applications in-house to be reviewed.

## **New Business**

### **Office Lease – LeVeque Tower**

Chairman Rocco called on Ms. Starr Richmond to discuss the lease regarding the office space rented from the owners of the LeVeque Tower. Ms. Richmond stated the original lease covered the time period of July 1, 2005 through June 30, 2007, and included two two-year renewal options. She said the first renewal option was in June 2007 and the last renewal option was in June 2009. Ms. Richmond said the lease would expire on June 30, 2011.

Following a brief discussion, Mayor Kuchta moved to authorize Chairman Rocco, Executive Director Richmond, and the Assistant Attorney General, Ms. Hawkinson, to research relocation options and to begin negotiation with the current landlord for a new lease. Mr. Kmiec seconded. A vote was taken and all the members were in favor.

### ***Certificates of Coverage Ratification***

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

Ms. Richmond said behind Tab 5 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 November 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 10 owners of 15 facilities receiving 2009 Certificates of Coverage.

Mr. Hull moved to ratify the list of 2009 Certificates of Coverage that were granted. Mr. Geyer 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 48 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. Mr. Hightower seconded. A vote was taken and all of the members were in favor. The motion passed.

Ms. Richmond said behind Tab 6 there is a listing of owners who had been issued a program year 2010 Certificate of Coverage; and behind the blue divider page, a listing of owners who had been denied 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 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 151 owners of 1,248 facilities receiving 2010 Certificates of Coverage on the list behind Tab 6.

Mr. Hull moved to ratify the list of 2010 Certificates of Coverage that were granted. Mr. Geyer seconded. A vote was taken and all of the members were in favor. The motion passed.

Ms. Richmond said behind the blue divider page in Tab 6 there is a listing of owners who had been denied a program year 2010 Certificate of Coverage.

Ms. Richmond asked the Board to ratify her actions with respect to the 34 facilities that were denied a Certificate of Coverage for program year 2010.

Mr. Hull moved to ratify the list of 2010 Certificates of Coverage that were denied. Mr. Cable seconded. A vote was taken and all of the members were in favor. The motion passed.

***Confirm Next Meeting***

Mr. Kmiec made a motion to adjourn the meeting. Mr. Hightower seconded. All were in favor. The next board meeting will be Wednesday, March 9, 2011, beginning at 10:00 a.m.