



# Petroleum Underground Storage Tank Release Compensation Board

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## MINUTES OF THE 150th MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD January 15, 2014

### BOARD MEMBERS IN ATTENDANCE

Jim Rocco  
John Hull  
Stephen Hightower  
Cheryl Hilvert  
Bruce Kranz  
Don Kuchta  
Tom Stephenson

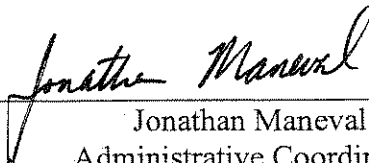
### EX-OFFICIO MEMBERS IN ATTENDANCE

Bill Hills, representing Director Andre Porter, Ohio Department of Commerce  
Chris Geyer, representing Interim Director Craig Butler, 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
Jonathan Maneval	Administrative Coordinator, PUSTRCB
Donna Oklok	Administrative Assistant, PUSTRCB
Nicole Waits	Account Examiner, PUSTRCB
Shalonda Lee	Coverage Analyst, PUSTRCB
Andre Porter	Director, Ohio Department of Commerce
Carla Dowling-Fitzpatrick	Assistant Attorney General
Howard Silver	Hearing Officer
Jodi Handlin	BJAAM Environmental Inc.
Brent McPherson	BJAAM Environmental Inc.
Will Latt	Speedway, LLC
Christie Kuhlmann	Stantec Consulting Services Inc.

Minutes submitted by:

  
Jonathan Maneval  
Administrative Coordinator

**Call to Order:**

Chairman Rocco convened the one hundred fiftieth meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, January 15, 2014. The following members were in attendance:

Jim Rocco; John Hull; Stephen Hightower; Cheryl Hilvert; Bruce Kranz; Don Kuchta; Tom Stephenson; Bill Hills, representing Director Andre Porter, Ohio Department of Commerce; Chris Geyer, representing Interim Director Craig Butler, Ohio Environmental Protection Agency; and Bob Field, representing Josh Mandel, State Treasurer of Ohio.

Chairman Rocco welcomed Andre Porter, who was appointed Director of the Ohio Department of Commerce in April 2013. Director Porter briefly introduced himself and discussed his role with the Department of Commerce. He thanked Bill Hills for serving as his representative to the Board, and offered his support, assistance and guidance.

**Minutes:**

Chairman Rocco asked if there were any comments or questions regarding the minutes from the November 20, 2013 Board meeting, and there were none. Chairman Rocco pointed out that there was a typographical error on page four in the draft minutes distributed to the Board members prior to the meeting. A corrected version of the minutes was provided in the members' meeting notebooks. Vice-Chairman Hull moved to approve the minutes. Mr. Hills seconded. A vote was taken and all members voted in the affirmative. The minutes were approved as presented.

**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 BUSTR had obtained two temporary service employees to work through the remainder of the fiscal year. He said the employees would be scanning and indexing completed files. He noted that BUSTR lost two file clerk positions as a result of budget cuts, and these temporary employees would allow BUSTR to close files. He said that BUSTR had changed some of its day to day operations so that in the future, closed files will be scanned and indexed before new files are opened.

Chairman Rocco asked if the documents are converted to PDF (portable document format) files. Mr. Hills stated that the files are scanned into Intellivue, an electronic document imaging system.

Mr. Hills reported that the Revolving Loan Fund rule had gone through the JCARR (Joint Committee on Agency Rule Review) process, and the rule should be effective on February 1, 2014. This fund will provide financing to enable political subdivisions to address the removal of abandoned underground storage tank systems. Mr. Hills noted the rule will allow a CIC (Community Improvement Corporation) to borrow from the fund. He stated that money cannot be loaned if there is a viable responsible person to perform the removal of the tank system.

Mr. Hills stated that BUSTR was finalizing the loan payment agreement and application forms, and these would be ready at the rule's effective date. A fact sheet concerning the eligibility criteria and loan agreement should also be available at that time.

Ms. Hilvert asked whether BUSTR had reached out to the Ohio Municipal League and Ohio City/County Management Association to provide information about the Revolving Loan Fund. Mr. Hills confirmed that they had, and BUSTR hoped to publish articles concerning the fund in the associations' newsletters.

Mr. Hills reported that BUSTR was awarded \$98,000 in additional LUST (leaking underground storage tank) grant monies for fiscal year 2014 for the purpose of performing responsible party searches of properties with petroleum UST releases. He said BUSTR was finalizing contracts with six vendors to perform these responsible party searches. He said that the project will be completed by June 30, 2014.

Mr. Hills reported that BUSTR had scheduled UST installer and UST inspector courses for February and March at the Ohio Fire Academy. He stated that these courses are being offered to fire departments with delegated authority from the State Fire Marshal, and also to other inspectors. He said the State Fire Marshal will be hosting the U.S. EPA Region 5 underground storage tank installer seminar in March 2014. He stated that installers and inspectors from the six states that make up Region 5 are expected to attend. He noted that BUSTR had no stakeholder trainings scheduled.

Mr. Hills stated that BUSTR has continued to work on the OTTER (Ohio Tank Tracking & Environmental Regulations) database and Click Scheduling, and they have been operating with only minor issues. 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 the Code Enforcement division of the State Fire Marshal has also started using Click Scheduling.

Mr. Hills reported that for the week ending January 4, 2014, 47 new inspections were performed for a total of 1,850 inspections for the three-year inspection cycle ending June 30, 2016. He said seven NFAs (no further actions) were generated during this same time period for a total of 150 for the grant cycle ending September 30, 2014. He noted this number is slightly below the target projections established by the U.S. EPA.

Mr. Hills stated that roughly 22,000 USTs have been registered, and there were about 3,700 owners of 7,500 registered facilities. He said since the start of the BUSTR program, the number of NFAs is approaching 28,000.

### **Financial Report:**

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

Mr. Leasor reported that Schneider Downs submitted the audited financial statements to the Auditor of State prior to the December 31, 2013, deadline. Mr. Leasor noted that the audit report is subject to review and acceptance by the Office of the Auditor of State. He said the report will be made publicly available when it is released by that office.

Mr. Leasor stated that since the contract with Schneider Downs had ended, the Board is required to begin working with the Office of the Auditor of State to issue a Request for Proposal for the selection of an Independent Public Account for the next five-year audit cycle. He stated that, in previous years, a Board member was asked to provide assistance and input in the proposal selection process. Mr. Leasor asked Mr. Geyer to assist, and he agreed.

### ***October and November Financials***

Mr. Leasor said the October and November 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 January 14, 2014, the unobligated balance was \$18.9 million. He said this included \$12.9 million in STAR Ohio and the \$6 million invested in US treasuries and US agency callable bonds. He reported that the balance in the obligated account as of January 14, 2014 was approximately \$5.8 million.

Mr. Leasor stated the claims expense for November was approximately \$508,000, and as of January 14, 2014, \$3.2 million has been paid for claims for fiscal year 2014.

Mr. Leasor reported that, as of November 30, 2013, 97.6% of the budgeted revenues net of refunds, have been collected. He said information on refunds and fee collections would be presented with the Compliance/Fee Assessment Report.

Mr. Leasor said the total operating expenses for November were \$138,000. He said that, as of November 30, 2013, postage expense was 68% of the amount budgeted. He said this is due to postage fees for the final quarter of fiscal year 2013 being paid in August of fiscal year 2014. He said these charges include fees for the annual fee statement mailing which is sent by certified mail.

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

### **Compliance/Fee Assessment Report:**

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

Ms. Esquivel reported that, as of December 31, 2013, \$53,425 in refunds has been paid for program year 2013. She said this amount represents about 20% of the refund goal of \$250,000 that was set for the program year. She noted that 103 refunds had been paid to 55 owners. She said the amount of pending refunds totals \$1,388,996.

Ms. Esquivel stated that before a refund is issued, the owner's refund is first used to offset any outstanding fees, and that, as of December 31, 2013, a total of \$78,000 was used to offset outstanding fees for program year 2013.

Ms. Esquivel stated that, as of December 31, 2013, a total of \$113,974 had been collected by the Attorney General's Office and Special Counsel for program year 2013. She said after deducting the collection costs of \$40,258, the net amount received by the Board was \$73,716.

Ms. Esquivel stated that, as of December 31, 2013, 79 accounts totaling \$127,880 had been certified to the Attorney General's Office for collection. She noted that unpaid 2013 program year's fees would be certified to the Attorney General's Office on January 31, 2014.

Mr. Hightower questioned how collection costs are determined. Ms. Esquivel responded that the Attorney General's Office charges 10% of the amount collected and Special Counsel, which are private attorneys, charge 33.3% of the amount collected.

Ms. Esquivel stated that seven Orders Pursuant to Law are under appeal. She said five are under review, one hearing is scheduled and one settlement agreement is pending. Ms. Esquivel said two Determinations to Deny a Certificate of Coverage are under appeal. She said one is under review and one hearing is scheduled.

Ms. Esquivel stated 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, as of January 2, 2014, Certificates of Coverage have been issued to 3,085 owners. She said there are 200 Applications for Certificates of Coverage currently in process.

Ms. Esquivel stated that there are 55 uncashed refund checks that total \$37,795. She said there is \$62,555 in refunds pending for 57 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 that, as of January 2, 2014, the total maximum liability of in-house open claims is just under \$30 million. She said using the historical average claim payout ratio of 70% to 75%, the anticipated claim liability of unpaid in-house claims is between \$21 million and \$22 million. She stated that, as of January 2, 2014, a total of 2,169 Fund eligible sites have been issued NFAs with an average cleanup cost of \$128,600 per site. She said after applying the deductibles and removing the disallowed costs, the average payout per closed site was just under \$69,000.

Ms. Duann stated that, as of January 2, 2014, there were almost 1,800 claims pending review and 18 claim settlement determinations under appeal.

Ms. Duann reported that during the last six months, the Board received an average of 80 claims per month. She pointed out that this was about 20% higher than the average received during the last five program years. She said during the last six months, an average of 69 claims per month were settled. She said the total claim settlement offer for the last six months was just over \$3.2 million with an average claim payout of 76.3% of the net value. She said that the payout average was approximately 5% higher in comparison to previous years' statistics. She noted that owners have been filing claims more timely, which has reduced the amount of costs disallowed for late filing.

Chairman Rocco asked if Ms. Duann knew why there had been an increase in the number of claims submitted. Ms. Duann said she could not provide an explanation for the increase. She noted that the face value of the claims received was also high in comparison to the recent previous years.

Mr. Hightower questioned whether LNG (liquefied natural gas) and CNG (compressed natural gas) tanks installed underground are covered by the Fund. Chairman Rocco responded stating that these tanks are regulated by the Code Enforcement division of the State Fire Marshal's Office. Since the tanks are not regulated by BUSTR, any release from the tanks would not fall under its corrective action program, and the cleanup costs would not be reimbursed by the Fund. Mr. Geyer questioned whether it was necessary to amend the Board's rules to specifically exclude these tanks. Chairman Rocco said that it was not.

Vice-Chairman Hull noted that when LNG and CNG tanks have chronic losses and leaks, the leaks manifest themselves as a low-level residual pollution at the site affecting the soil and groundwater. He pointed out that if this occurs at a site that has or historically had petroleum USTs, the Board may become involved in determining the cause and source of the contamination when eligibility under the Fund is sought.

Ms. Duann reported that in the past six months, 26 eligibility applications had been received, and during this same time period, 42 eligibility determinations had been issued. She said 90% of these determinations were approvals. She reported that the average eligibility approval rate for the last ten years was 69%, and for the last five years, it was 74%. She said that, as of January 2, 2014, there were 13 eligibility applications pending review and three eligibility determinations under appeal.

Ms. Duann said for the last six months, 88 requests for cost pre-approval had been received and 95 cost pre-approval notifications had been issued. Of the cost pre-approvals received, 22 had been requests for pre-approval of annual RAP (remedial action plan) costs. She said this number was also high when compared to previous years. She reported that 37 cost pre-approval requests were pending review as of January 2, 2014.

**New Business:**

***Appeal Hearing***

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 Prime Properties Limited Partnership.

**Claim #21313-0001/08/28/09-A, Prime Properties Limited Partnership dba Prime Station #11, 7411 State Road, Parma, Ohio**

Hearing Officer Silver stated that the case being presented to the Board concerned an appeal filed by Prime Properties Limited Partnership involving a gas station in Parma, Ohio. He said that in August 2009, an accidental release of petroleum was discovered at the site and reported to BUSTR. He stated that at the time of the release, there were four 10,000-gallon gasoline underground storage tanks located at the site. He noted that these tanks were removed within 60 days of the release being discovered.

Mr. Silver said the Board received an application for financial assurance fund eligibility on November 17, 2009. He said that, on May 13, 2010, the Board's Executive Director, as the Director of the Fund, denied Prime Properties' application. He said following that determination of eligibility, the applicant submitted additional information, and on February 23, 2011, the Director issued a revised determination of eligibility granting approval for Prime Properties to file claims against the Fund.

Mr. Silver said that within the revised eligibility determination, dated February 23, 2011, the Director notified Prime Properties that within 60 days, a claim application must be submitted for the reimbursement of any costs associated with completed program. He noted that 60 days from the date of the Director's letter was April 24, 2011.

Mr. Silver said the Board received a claim from Prime Properties on May 17, 2011, for the reimbursement of costs totaling around \$85,000. He noted that a second version of the claim, which included additional information, was received in August 2011. He said the review of the claim(s) revealed a number of items that were missing from the claim, including invoices, receipts and reports. Mr. Silver said the missing information was requested from Prime Properties in a letter dated October 25, 2011. He pointed out that none of the requested information was ever received.

Mr. Silver said that, on October 31, 2012, the Director issued a claim settlement determination. He said the determination letter included nine sections that referred to a group of invoices or receipts. He said in each of these sections, the Director made a determination to deny costs claimed by the applicant. He explained that these costs were denied for a variety of reasons, including late filing, undocumented costs, non-reimbursable costs associated with tank removal, and costs that were not associated with corrective action.

Mr. Silver stated that within his report, he referenced the statutory authority or the authority granted by the Board's rules as to why the costs had been denied. He recommended that the Director's determination be upheld by the Board.

In response to Mr. Geyer's question, Chairman Rocco clarified that due to the revised settlement determination issued by the Director, the applicant had been granted time beyond the one-year filing deadline to submit costs associated with completed program tasks.

Chairman Rocco requested a motion to adopt the findings of facts, conclusions of law, and recommendation of the hearing officer that the October 31, 2012 claim settlement determination issued by the Director of the Financial Assurance Fund to Prime Properties Limited Partnership LLC, comprises valid state action as a matter of fact and law and that it be upheld. Vice-Chairman Hull so moved. Mr. Stephenson seconded. All members voted in the affirmative. The motion passed.

### ***Consulting Services Contract***

Chairman Rocco said that he and Executive Director, Starr Richmond, have had discussions concerning issues with the claim review process. He said there have been some questionable claims submitted, and concerns as to the validity of the charges.

Chairman Rocco said that they believed it would be helpful to obtain a report from an independent third party that evaluated the claim review process and outlined the typical range of costs being submitted with certain claims, the documentation being provided with these claims and the justification submitted to support the work performed. He noted that the review could also serve as an internal audit which could reveal any issues of concern of the claim review process.

Chairman Rocco said they discussed contracting with Schneider Downs to perform the review, due to their experience as the Board's auditors for the last five years. He said that during this time, Schneider Downs has gained a valuable understanding of the Board's processes and procedures and this understanding cannot be obtained from another third-party contractor. He noted that the audit contract with Schneider Downs expired with the audit of fiscal year 2013, and there would be no conflict if the Board were to contract with them to perform the study. In response to Vice-Chairman Hull's question, Chairman Rocco confirmed that there were monies available in the budget to contract to perform the work.

Chairman Rocco requested a motion to authorize the Director and Chair to enter into a contract with Schneider Downs on a time and material basis in an amount not to exceed \$35,000. Vice-Chairman Hull so moved. Ms. Hilvert seconded.

Following a lengthy discussion concerning the objectives and purpose of the project, and the expectations of the report, Mayor Kuchta called the question. A vote was taken. The following members voted in the affirmative: Ms. Hilvert and Messrs. Rocco, Hull, Kuchta, Kranz, Stephenson, Geyer, Hills and Field. Mr. Hightower abstained.

#### **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 that behind Tabs 7 and 8 are listings of facilities that, since the November Board meeting, have 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 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 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 Certificate of Coverage to the owner of the one facility included on the list behind Tab 7.

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

Ms. Richmond stated that no 2012 program year Certificates of Coverage had been denied since the Board's November meeting.

Ms. Richmond requested the Board ratify her actions with respect to the issuance of the 2013 program year Certificates of Coverage for the 67 owners of the 196 facilities included on the list behind Tab 8.

Mayor Kuchta moved to ratify the issuance of the 2013 Certificates of Coverage for the facilities 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 denial of the 2013 program year Certificates of Coverage for the 13 owners of 16 facilities included on the list behind the Tab 8 green divider page.

Vice-Chairman Hull moved to ratify the denial of the 2013 Certificates of Coverage listed. Ms. Hilvert seconded. A vote was taken and all members voted in the affirmative. The motion passed.

**Executive Session:**

Chairman Rocco requested a motion to enter into executive session with counsel pursuant to O.R.C. 121.22(G)(3) to discuss matters of pending or imminent court action. Vice-Chairman Hull so moved. Mayor Kuchta seconded. Chairman Rocco called for a roll call. The following members voted in the affirmative: Ms. Hilvert and Messrs. Field, Geyer, Hightower, Hills, Hull, Kranz, Kuchta, Stephenson and Rocco. There were no nays. 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.

Vice-Chairman Hull moved to authorize the Petroleum Underground Storage Tank Release Compensation Board to file a complaint in the matter currently pending against BP. Mayor Kuchta seconded. Chairman Rocco asked if there was any discussion, and there was none. A

vote was taken and the following members voted in the affirmative: Ms. Hilvert and Messrs. Field, Geyer, Hightower, Hills, Hull, Kranz, Kuchta and Stephenson. Chairman Rocco abstained. There were no nays. The motion passed.

Vice-Chairman Hull moved to authorize the termination of the tolling agreement between BP and the Petroleum Underground Storage Tank Release Compensation Board at the appropriate time. Mayor Kuchta seconded. Chairman Rocco asked if there was any discussion, and there was none. A vote was taken and the following members voted in the affirmative: Ms. Hilvert and Messrs. Field, Geyer, Hightower, Hills, Hull, Kranz, Kuchta and Stephenson. Chairman Rocco abstained. There were no nays. The motion passed.

**Confirm Public Hearing and Next Meeting and Adjourn:**

Chairman Rocco stated that there will be a public hearing concerning the proposed rule amendment on Wednesday, February 19, 2014, at 10:00 a.m. The next Board meeting will commence immediately following the public hearing. A Rules Committee meeting will be held following the Board meeting at 12:30 p.m.

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