



Petroleum Underground Storage Tank Release Compensation Board

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MINUTES OF THE 162nd MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD January 13, 2016

BOARD MEMBERS IN ATTENDANCE

Jim Rocco
John Hull
Don Bryant
Scott Fleming
Steve Hightower

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
Dana Wasserman, 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
Jennifer Croskey	Assistant Attorney General
J.D. Pisula	Treasurer of State's Office
Bill Kennedy	Kennedy Cottrell Richards, LLC
Michelle Pfefferle	Organ Cole LLP
Doug Cole	Organ Cole LLP
Rob Oshenbauch	API Ohio
Bill Behrendt	OPMCA
Dan Adams	ATC Group Services, LLC
Will Latt	Speedway, LLC
Jodi Handlin	BJAAM Environmental, Inc.

Minutes submitted by:


Jonathan Maneval
Administrative Coordinator

Call to Order:

Chairman Rocco convened the one hundred sixty-second meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, January 13, 2016.

The following members were in attendance: Jim Rocco; John Hull; Don Bryant; Scott Fleming; Steve Hightower; Bill Hills, representing Director Jacqueline Williams, Ohio Department of Commerce; Chris Geyer, representing Director Craig Butler, Ohio Environmental Protection Agency; and Dana Wasserman, representing Josh Mandel, State Treasurer of Ohio.

The following member was not present: Tom Stephenson.

Chairman Rocco announced that Cheryl Hilvert had resigned from the Board due to recently implemented changes that affected the OPERS healthcare benefit for retirees. He invited the Board members to recommend individuals to replace Ms. Hilvert as a representative of local governments. He introduced Dana Wasserman, who was attending as the designee on behalf of the State Treasurer of Ohio.

Minutes:

Chairman Rocco asked if there were any comments or questions regarding the minutes from the November 18, 2015 Board meeting, and there were none. Vice-Chairman Hull moved to approve the minutes. Mr. Geyer 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 said the third responsible party search program is underway, and the vendors are on track to complete the project by the end of the fiscal year. The program is used to identify underground storage tank (UST) owners and operators responsible for the investigation and cleanup of petroleum releases.

Mr. Hills said the bids that were submitted for the OTTER (Ohio Tank Tracking & Environmental Regulations) upgrade project had been evaluated, and BUSTR is awaiting a contract to be awarded by the Department of Administrative Services.

Mr. Hills reported that a certified installer course will be held at the State Fire Marshal Academy on February 1 through 5, 2016, and a certified inspector course will be offered February 22 through 25, 2016. He said a questionnaire has been sent to inspectors and installers in order to collect information concerning their continued availability.

Mr. Hills said that BUSTR's personnel are continuing their review of the new U.S. EPA UST regulations and the first draft of the BUSTR administrative rule amendments is tentatively scheduled to be made available for stakeholder review and public comment in the month of March. He said the goal is to update both the release prevention and corrective action rules jointly, and to file any necessary amendments with JCARR (Joint Committee on Agency Rule Review) in 2016.

Mr. Hills reported for the week ending January 2, 2016, there were 35 new inspections performed for a total of 6,763 inspections for the three-year inspection cycle ending June 30, 2016. He said that two NFAs (no further actions) were generated during this same time period for a total of 118 NFAs for the grant cycle ending September 30, 2016.

Mr. Hills stated that, as of January 2, 2016, there were about 21,700 registered USTs and 3,669 owners of 7,366 registered facilities. He said since the origination of the BUSTR program, the number of NFAs issued is just over 29,000.

Financial Reports:

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

Audit Report

Mr. Leasor introduced Bill Kennedy, a representative from Kennedy Cottrell Richards, to present the draft copy of the financial statements and supplementary financial information for the year ending June 30, 2015, which had been distributed to each member.

Mr. Kennedy thanked Mr. Leasor, Ms. Richmond and other Board staff for their work and assistance during the audit process, and noted that the audit went very smoothly as a result of their hard work in providing the information needed. He said following the Board's review of the financial statements and his firm's draft reports, they would submit the audit for review and acceptance by the Office of the Auditor of State.

Mr. Kennedy briefly discussed the Independent Auditor's Report. He explained that management was responsible for the preparation and presentation of the financial statements in accordance with generally accepted accounting principles, and that Kennedy Cottrell Richards was responsible for conducting its audit in accordance with generally accepted auditing standards and with government auditing standards.

Mr. Kennedy directed members to the opinion presented in the final paragraph of the first page of the report and explained it is an unqualified opinion, stating that the financial statements present fairly, in all material respects, the financial position of the Board as of June 30, 2015. He pointed out that the implementation of GASB (Governmental Accounting Standards Board) Statement No. 68 is mentioned on the second page of the report, and explained that this new accounting Statement became effective in 2015 and requires the financial reporting of net pension liability as calculated by the Ohio Public Employees Retirement System.

Mr. Geyer asked whether the reserve for unpaid claims represents in-house open claim packages or a projection of future claim costs. Mr. Kennedy explained that the estimated liability includes both. Vice-Chairman Hull questioned why the reserve for unpaid claims increased by approximately \$2.6 million, when the five-year financial projections estimate the liability to decrease over the next four years. Mr. Leasor explained that the reserve for unpaid claims is established through the annual claim liability study, and the increase is a result of claim reimbursements being paid at a rate less than the increase in the ultimate estimated loss.

Mr. Kennedy said their firm reviewed the management's discussion and analysis section as well as the two supplementary schedules. He said they do not audit this section but performed some limited procedures to check for obvious errors, and noted that any significant deficiencies would have been reported.

Mr. Kennedy then directed members to Kennedy Cottrell Richards' second report concerning the Board's internal controls over financial reporting and other compliance matters, which is required in accordance with government auditing standards. He explained that as part of the financial statements audit, their firm considered the Board's internal controls over the financial reporting process, and tested those controls, or verified that the controls were operating and in place. He stated that they do not provide an opinion on internal controls. However, they did not identify any deficiencies in internal control over financial reporting that would be considered to be material weaknesses, and have no recommendations to report. He directed members to contact him if they had any concerns about fraudulent or illegal activities that might impact the financial statements.

Chairman Rocco requested that each member take time to review the draft financial statements, and if there were questions or comments, to contact Mr. Leasor or Director Richmond.

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, as of January 12, 2016, the unobligated account balance is \$24.6 million. He said this amount includes \$16.6 million in STAR Ohio and the custodial account, and the \$8 million invested in U.S. treasuries and U.S. agency callable bonds. He said the obligated account balance for the payment of claims is just over \$5.5 million.

Mr. Leasor said the claims expense for November was about \$334,000, and to date, approximately \$3.5 million had been paid for claims for fiscal year 2016.

Mr. Leasor reported that, as of November 30, 2015, 100% of the budgeted revenues, net of refunds, had been collected. He said, as a result of discussions in the previous meeting, the monthly income spreadsheet now includes a separate line showing the amount of refunds paid. He added that future five-year financial projections will account for the refund liability in a manner similar to the claim liability presentation.

Mr. Leasor said information on refunds and fee collections would be presented with the compliance and fee assessment report.

Mr. Leasor stated that the operating expenses for November were approximately \$142,000. He pointed out that, as of November 30, 2015, expenses should be around 42% of the amount budgeted for the fiscal year.

Mr. Leasor said, as of November 30, 2015, postage expense was 74% of the amount budgeted. He said this was due to postage fees for the final quarter of fiscal year 2015 being paid in July of fiscal year

2016. He said these charges include fees for the annual fee statement mailing, which is sent by certified mail, as well as the mailing of the Notifications of Non-Compliance and Orders Pursuant to Law.

Mr. Leasor said salary expenses are below budget, and explained that the budget for salaries had been built with the expectation that an additional claims analyst would be hired, but the position has not been filled. In addition, two positions in the compliance department are currently vacant. He said temporary services expenses are below budget, but noted that this expense will increase due to the use of a temporary employee to fill one of the vacant compliance department positions. He said printing and copying costs are historically low in the first quarter, but this expense will also increase with the publication of the newsletter and printing of the annual fee statements in the fourth quarter.

Mr. Leasor said the legal and professional line item is below the anticipated amount. However, this will increase when the second quarter costs associated with the Assistant Attorney General and auditing services are invoiced. He said there has been minimal travel for legal related matters during the first quarter, which resulted in travel expenses also being below budget. He said employee expenses are below budget due to vacancies, and the telephone expense was below budget due to November's invoice being paid in the month of December.

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

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 December 31, 2015, refunds totaling \$42,670 have been paid to 58 owners for the 2015 program year, which began July 1, 2015. She said a total of \$34,015 was used to offset prior years' outstanding fees. She said the combined amounts total \$76,685, which represents 34% of the \$225,000 refund goal set for the 2015 program year. She reported the amount of refunds pending totals \$1,400,629.

Ms. Esquivel said, as of December 31, 2015, a net total of \$118,202 had been collected by the Attorney General's Office and Special Counsel.

Ms. Esquivel said, as of December 31, 2015, 125 accounts for 17 owners totaling \$394,370 have been certified to the Attorney General's Office for collection. She said the certification of unpaid 2015 program year's fees will occur at the end of the month.

Ms. Esquivel said eight Orders Pursuant to Law and two Determinations to Deny a Certificate of Coverage are under appeal. She said one hearing was recently held, and all other appeals are under review.

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

Ms. Esquivel reported that 3,010 Certificates of Coverage had been issued thus far for program year 2015.

Ms. Esquivel stated that there are 60 uncashed refund checks that total \$50,057. She said there is \$33,765 in refunds pending for 26 owners from whom more information has been requested.

Claims Reports:

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

Ms. Duann said, as of January 4, 2016, the total maximum liability of in-house open claims is \$29.6 million. She said using the historical claim payout ratio of 75%, the actual anticipated claim liability of unpaid in-house claims is about \$22.3 million.

Ms. Duann reported that, as of January 4, 2016, a total of 2,344 Fund eligible sites had received no further action status with an average cleanup cost of \$130,700 per site. She said after subtracting the deductible amount and disallowed costs, the average payout per closed site is just under \$70,700.

Ms. Duann said, as of January 4, 2016, a total of 1,547 claims with a total face value above the deductible amount were pending review. She said, as reported at the previous Board meeting, a significant number of requests for more information were issued in order to obtain documentation necessary to review and settle these claims, and a number of responses had been received from the tank owners or their consultants.

Ms. Duann stated that 15 claim settlement determinations were under appeal.

Ms. Duann reported that during the last six months, an average of 68 claims per month were received, and the staff settled or closed an average of 73 claims per month. She said the total claim settlement offer was \$3.5 million, and the average claim payout ratio this program year is 74.5% of the net value.

Ms. Duann said there are currently 15 tank owners that have been granted hardship status, and their claims are being reviewed or settled within one month of receipt. She noted that during the last five months, a total of 18 claim applications were submitted by owners in hardship status, which represents 6% of the claims that were settled within this same time period. She noted that claims submitted by owners that have not been granted hardship status, are being reviewed within six to seven months of receipt.

Ms. Duann said that during the last six months, 44 eligibility applications were received and 42 eligibility determinations were issued. She highlighted that an unusually high number of applications were submitted in the months of August and November. She said of the 42 eligibility determinations issued, 12 were denied. She pointed out that eight of the applications were denied as a result of no release being demonstrated or no corrective action work being required. She said, as of January 4, 2016, a total of 20 eligibility applications were pending review, and four determinations to deny eligibility were under appeal.

Ms. Duann said, as of January 4, 2016, a total of 73 requests for cost pre-approval had been received in the 2015 program year, and 78 cost pre-approval notifications were issued. There are 31 cost pre-

approval requests currently pending review. She said in comparison to the previous year, the numbers of cost pre-approval requests received and notifications issued are about the same.

Finance Committee Report:

Chairman Rocco reminded members that at the November meeting, the Board discussed the annual per-tank fee and deductible amounts for the upcoming program year, but did not formally take action on the Finance Committee's recommendation to make no changes to these amounts. He then requested a motion to adopt the recommendation of the Finance Committee to make no changes to the per-tank fees or deductible amounts for program year 2016. Mr. Hightower so moved. Mr. Geyer seconded. A vote was taken and all members voted in the affirmative. The motion passed.

Chairman Rocco said that since the November meeting, representatives from the State Treasurer's Office met with the Board's Executive Director and Chief Fiscal Officer concerning the investment of monies outside of STAR Ohio (State Treasury Asset Reserve of Ohio), and that prior to the Board meeting, the Finance Committee looked at two investment strategies that had been developed for consideration. One option was for the investment of an additional \$4 million, and the second option was for the investment of an additional \$6 million. He said as a result of their discussions, the committee was recommending that an additional \$6 million of unobligated funds be invested outside of STAR Ohio. He then called upon Don Leasor to discuss how the investment of \$6 million would impact the Fund's five-year financial projections.

Mr. Leasor briefly explained that the Board had previously invested \$8 million from the unobligated STAR Ohio account into U.S. treasuries and U.S. agency callable bonds, with the investments being laddered over a three-year period so that a portion of the investments matures annually. He said that currently about \$16 million of unobligated monies is being held in the STAR Ohio account, and the committee discussed investing additional monies in order to obtain higher returns on these unobligated monies.

Mr. Leasor directed members to the Unobligated Fund Projections report, which summarized the Fund's five-year financial projections with the investment of an additional \$6 million into U.S. treasuries and U.S. agency callable bonds. He reviewed the assumptions used to build the projections and pointed out the projected expenses were calculated using anticipated claim payments of \$9.5 million and 125% of anticipated operating and capital expenses to account for any unforeseen increases in operating or capital expenses. He pointed out that in fiscal year 2020, the projections indicate that expenses will be just over \$12.1 million, and the balance of the STAR Ohio and custodial account will be less than the projected expenses. He then called upon J.D. Pisula, Deputy Director of Investments with the State Treasurer's Office, to provide additional information on the committee's investment recommendation.

Mr. Pisula briefly reviewed the Board's current holdings and money market rates as of January 4, 2016. He pointed out that just under 75% of the Board's investment portfolio is currently in STAR Ohio, and the committee is recommending changing the investment strategy to invest an additional \$6 million from the unobligated STAR Ohio account into U.S. treasuries and U.S. agency callable bonds, laddered with two, three and four-year maturity dates. He said by making this change, the Board could take

advantage of the higher interest yields of these instruments, and incremental annual earnings would likely increase by about \$55,000. He noted the cash to bond allocation would then be closer to 50/50, and the weighted days to maturity would increase from 136 days to just under a year.

Mr. Hightower asked whether any alternative higher yielding investments were considered. Mr. Pisula responded explaining that the Board's investment options are restricted by the Board's investment policy and the Ohio Revised Code. He noted that currently the highest yielding investment allowed under the policy would be a five-year security such as a Fannie Mae or Freddie Mac bond that has an imbedded call option, and because of the imbedded call option, there is an element of active management that would be required.

Mr. Geyer questioned whether it would be better to invest in shorter term securities given the Federal Reserve has indicated that interest rates will be raised. Mr. Pisula explained that the shape of the yield curve has an implied interest rate trajectory, and the yields shown essentially account for the market's assessment of where interest rates are going to go.

Chairman Rocco pointed out that beginning in 2018, \$4 million of the investments will mature annually as a result of the laddered investment strategy. He said the ultimate goal is to reduce the Fund's unobligated account, and it is expected that over time, as some notes mature, it will be necessary to move some of the money back into the STAR Ohio account rather than to reinvest it.

After some further discussion, Chairman Rocco requested a motion to approve the investment of \$6 million, and to authorize the Executive Director and the Chief Fiscal Officer to place \$3 million from the unobligated account into U.S. treasuries and an additional \$3 million from the unobligated account into U.S. agency callable bonds with maturity dates laddered over two, three and four years; and to reinvest these funds in like securities upon maturity. Mr. Geyer so moved and Mr. Hightower seconded.

Vice-Chairman Hull moved to insert the words "unless otherwise directed by the Board" following the words "to reinvest these funds in like securities upon maturity" in the original motion. Vice-Chairman Hull explained that the proposed amendment clarifies that if the Board determines that the money should be moved back to the STAR Ohio account, the funds will not be reinvested. Mr. Bryant seconded. A vote was taken to amend the motion. All were in favor and the motion was amended.

Chairman Rocco asked if there was any discussion regarding the amended motion on the floor and there was none. A vote was taken, and all were in favor. The motion passed as amended.

New Business:

Hardship Application

Chairman Rocco called upon Ms. Richmond to present the hardship application.

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 by accelerating the review of the claim, it 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. EPA financial capacity test is used to evaluate the owner's cash flow and determine if the owner is able to carry debt, in which case, the owner could finance the costs of corrective actions over time.

Claim # 20240-0001/05/28/08, Owner – Amanda Carryout Inc.

Ms. Richmond said Amanda Carryout Inc. is the responsible party for a 2008 release that occurred at 145 East Main Street in Amanda, Ohio. She explained that as a representative of the owner, Mr. Allen Frank is requesting the Board grant hardship status to Amanda Carryout Inc. This is the sixth request for hardship status with the last one having expired in June of 2015.

Ms. Richmond said to date, the Fund has reimbursed \$189,000 for corrective actions for this release, and there are two claims pending review totaling approximately \$23,000. Additionally, the estimated cost of corrective action work expected to take place over the next 12 months is \$55,000.

Ms. Richmond said based on Amanda Carryout's income tax records, which showed the business reported income of \$18,000 for calendar year 2014, the U.S. EPA ABEL model for corporations estimates a 55% probability that Amanda Carryout can afford \$55,000 in corrective action costs. However, the U.S. EPA typically employs the 70% probability level for determining the ability to pay. In addition, the probability levels are based upon projected cash flows for the next three years. Given the costs over the next year are estimated at \$55,000 and its anticipated that additional costs will be incurred in the following two years, Amanda Carryout does not have sufficient cash flow to carry the projected costs of corrective action. Ms. Richmond recommended that the Board approve the application and grant hardship status to Amanda Carryout, Inc. Vice-Chairman Hull so moved and Mr. Fleming seconded.

Mr. Hightower questioned whether the individual's assets or corporation's assets had been used to evaluate the need for hardship status. Mr. Leasor responded explaining that the U.S. EPA model uses only the corporation's financial information in the analysis. Mr. Hightower pointed out that the application appears to include irrelevant individual income and expense information rather than the numbers used in the model, and requested that in the future, the business financial statements or the corporation's tax returns be provided to the Board members for consideration. Chairman Rocco said historically copies of IRS tax forms have not been distributed to Board members as they contain sensitive and confidential information.

Chairman Rocco stated that as a result of concerns raised at the November Board meeting, the Finance Committee had begun reviewing the hardship program and their discussions included whether personal assets should be considered along with the business financials when evaluating the need for hardship status. Mr. Geyer said in his opinion, there is likely no cost benefit to the agency for the Board's staff to perform extensive financial background checks on applicants seeking hardship status. Instead he would rather see their time being used to process the backlog of claims. He suggested that only a

summary of the applicant's gross revenues and expenses be provided to Board members for consideration.

Following some further discussion, a vote was taken to approve Amanda Carryout, Inc.'s hardship application 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 been issued 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 November Board meeting, had been issued a program year 2014 or 2015 Certificate of Coverage. She noted that no Determinations to Deny a Certificate of Coverage had been issued since the November meeting.

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.

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 2014 program year Certificates of Coverage for the five facilities included on the list behind Tab 8.

Mr. Hills moved to ratify the issuance of the 2014 Certificates of Coverage for the facilities listed. Mr. Bryant seconded. A vote was taken and all of the members were in favor. The motion passed.

Ms. Richmond requested the Board ratify her actions with respect to the issuance of the 2015 program year Certificates of Coverage for the 102 owners of 217 facilities included on the list behind Tab 9.

Mr. Geyer moved to ratify the issuance of the 2015 Certificates of Coverage for the facilities listed. Mr. Fleming seconded. A vote was taken and all of the members were in favor. The motion passed.

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. Mr. Hills so moved. Vice-Chairman Hull seconded. Chairman Rocco called for a roll call. The following members voted in the affirmative: Ms. Wasserman and Messrs. Bryant, Fleming, Geyer, Hightower, Hills, Hull, and Rocco. There were no nays. The motion passed.

During the executive session, Chairman Rocco and Mr. Fleming requested to be recused from a portion of the executive session, and Chairman Rocco turned the meeting over to Vice-Chairman Hull.

As a point of order, Mr. Bryant and Mr. Hightower left during the course of the executive session and there was no longer a quorum present.

Reconvene Meeting

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

Confirm Next Meeting and Adjourn:

Chairman Rocco stated that there was no longer a quorum present and entertained a motion to adjourn. Vice-Chairman Hull so moved and Mr. Hills seconded. All were in favor.

Chairman Rocco said that the next Board meeting will be held on Wednesday, March 16, 2016, at 10:00 a.m.