



Petroleum Underground Storage Tank Release Compensation Board

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MINUTES OF THE 192nd MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD

January 12, 2022 – 10:00 a.m.

BOARD MEMBERS IN ATTENDANCE

Jim Rocco
John Hull
Steve Bergman
Larry Burks
Dan Ridi
Tom Stephenson

EX-OFFICIO MEMBERS IN ATTENDANCE

Steven Krichbaum, representing Director Sheryl Creed Maxfield, Ohio Department of Commerce
Donna Waggener, representing Director Laurie Stevenson, Ohio Environmental Protection Agency
Jon 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
Hannah Brame	Claims Supervisor, PUSTRCB
Jonathan Maneval	Executive Assistant, PUSTRCB
Bill Kennedy	Rea & Associates
Doug Darrah	ECS Midwest, LLC

Minutes submitted by:


Jonathan Maneval
Executive Assistant

Call to Order:

Chairman Rocco convened the one hundred ninety-second meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, January 12, 2022.

The following members were in attendance: Jim Rocco; Steve Bergman; Larry Burks; John Hull; Dan Ridi; Tom Stephenson; Steven Krichbaum, representing Director Sheryl Creed Maxfield, Ohio Department of Commerce; Donna Waggener, representing Director Laurie Stevenson, Ohio Environmental Protection Agency; and Jon Azoff, representing Robert Sprague, State Treasurer of Ohio.

The following members were not in attendance: Don Bryant and Scott Fleming.

Chairman Rocco announced that Assistant Attorney General, Natasha Natale, was recently appointed to represent the Board. He noted that she was unable to attend the meeting in person and was viewing it online.

Minutes:

Chairman Rocco asked if there were any comments or questions regarding the minutes from the November 17, 2021 Board meeting and there were none. Vice-Chairman Hull moved to approve the minutes and Mr. Bergman seconded. A vote was taken and all were in favor. The minutes were approved as presented.

BUSTR Report:

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

Mr. Krichbaum reported that BUSTR's staff returned to working remotely and would likely continue teleworking until the end of the month. He said a number of personnel positions at BUSTR remain unfilled including two inspector positions, two supervisor positions, and an environmental specialist position. He said the interview process for the two environmental supervisor positions was completed and the intent is to fill the positions in the next three to four weeks.

Mr. Krichbaum said, even though BUSTR staff is not working in the central office, they are continuing their normal functions including performing compliance inspections, reviewing environmental reports, and completing responsible party searches.

Mr. Krichbaum said the grant funding for BUSTR is in good order and noted the UST (underground storage tank) grant is in its first year and the LUST (leaking underground storage tank) grant is in its final year. He said an application for the continuation of the LUST grant will be submitted to the U.S. Environmental Protection Agency (U.S. EPA) in the spring and he does not anticipate there being any problems with it.

Mr. Krichbaum reported that BUSTR's staff completed their in-house training for the 2021 cycle and they are moving in to the 2022 cycle. He said BUSTR is tentatively planning to offer Certified UST Installer and Certified UST Inspector courses in March 2022 at the Fire Academy. He noted that some COVID-related adjustments had been made to allow courses at the academy to move forward.

Mr. Krichbaum reported that there are about 21,000 registered tanks, 3,400 tank owners, and 7,000 facilities. Vice-Chairman Hull asked if the 5,817 inspections shown in the release prevention section of the report represents the number of facilities inspected or the number of tanks inspected. Mr. Krichbaum stated that it represents the number of facilities inspected. He noted that the staff is wrapping up the final year of the three-year inspection cycle and the hope is to bring the total number of inspected facilities to 7,000 by completing the remaining inspections in the spring and summer.

Chairman Rocco asked if a better compliance rate is being seen in this inspection cycle and Mr. Krichbaum said his impression is that a high number of owners are not in compliance because they are not fully aware of the latest federal and state rule changes. He noted that the three-year check of the spill and overfill equipment is the dominant deficiency being seen. He commented that he anticipates an improvement in the overall compliance rate in the next three-year inspection cycle as owners should be aware of the periodic testing requirements.

Financial Reports:

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

Audit Report

Mr. Leasor stated that the audit reports and financial statements for fiscal year 2021 were submitted to the Auditor of State's Office prior to the December 31, 2021 filing deadline. He pointed out that the final reports, including a copy of the Estimated Unpaid Claim Liability Report, were included with the meeting materials.

Mr. Leasor then introduced Bill Kennedy, a representative from the accounting firm of Rea & Associates, and asked him to discuss the audit reports.

Mr. Kennedy stated that it was his eighth year being involved in the Board's audit and thanked the Board's staff for their help providing everything needed for the audit to go smoothly. He explained that the Auditor of State's Office had completed their desk review of the audit and approved it to be publicly released.

Mr. Kennedy directed members to the Independent Auditor's Report, which he explained was the report on the Board's financial statements. He explained that the firm provides an opinion on the basic financial statements including the statement of net position; statement of revenues, expenses, and changes in net position; statement of cash flows; and notes to the financial statements. He stated that the firm does not provide an opinion on other supplementary items including management's discussion and analysis, and schedules concerning pension liabilities and other post-employment benefit liabilities. He noted that during the audit some limited procedures concerning those items were performed. He pointed out that the opinion is presented in the final paragraph of the first page of the

report and it states that the Board's financial statements are fairly presented in accordance with accounting principles generally accepted in the United States of America, commonly known as GAAP.

Mr. Kennedy then directed members to the second report titled Independent Auditor's Report on Internal Control over Financial Reporting and on Compliance and Other Matters Required by Government Auditing Standards. He explained that because the Board is a government entity, the audit requires them to examine internal controls over financial reporting processes that could impact the Board's financial statements. He said they do not provide an opinion on internal controls but if there were any audit findings they would consider to be significant deficiencies or material weaknesses they would be included in the report; but there were no such matters to report. He stated that as part of the audit, the audit staff tested compliance with any material laws and regulations in the Ohio Revised Code and Administrative Code that could impact the financial statements. He said there were no instances of noncompliance to report.

Mr. Burks asked if the audit firm had looked at the Board's pension liability. Mr. Kennedy explained that the Board's Chief Fiscal Officer prepares a schedule which calculates the amount the Board owes to the Ohio Public Employees Retirement System (OPERS). He said his firm did look at that data and compared it against information provided by OPERS and no issues were found.

Estimated Unpaid Claims Liability Report

Mr. Leasor directed the members to the Estimated Unpaid Claims Liability report. He explained that the report is an estimate of the unpaid claim liability of the Fund, as of June 30, 2021, and this liability is reported in the audited financial statements.

Mr. Leasor said as a result of ongoing litigation, the Board suspended the review and settlement of claims filed by four major oil companies. He said beginning in fiscal year 2018, the Board contracted with an independent actuarial firm, Milliman, to assist in the development of the claim liability estimate for the claims that were suspended due to litigation.

Mr. Leasor stated that the processing of 222 claims was suspended due to litigation. He said, of the 222 claims, 142 were settled under a settlement agreement; 35 have been put back into the review process; and the remaining 45 claims are still being held.

Mr. Leasor said the estimate has two parts and explained that the first part presents the claims reported to the Board by June 30, 2021, and the second part are claims that have been incurred but not yet reported (IBNR). He noted that the IBNR estimate includes eligibility applications that had been submitted by June 30, 2021, but not yet determined, as well as an estimate for releases discovered on or before June 30, 2021, for which an eligibility application had not yet been submitted.

Mr. Leasor said the claim liability estimates are developed using actuarial techniques and explained that based on the historical claims data, specific methods were used in the analysis, and as a result of discussions with the actuaries, selections were made and inputted into the software program. He noted that there are a few selections which have a significant influence on the outcome, including the ratio of deductible recoveries to total gross face value less disallowed costs; ratio of disallowed costs to gross face value; average gross face value; and development factors used to determine the ultimate

paid loss and the ultimate gross face value. He pointed out that the selections are based on the assumptions and considerations discussed on pages 5 through 8 of the claims liability report.

Mr. Leasor directed members to the summary of the reserve estimates portion of the report. He said the estimate for the non-held claims determined eligible by June 30, 2021, was \$22.01 million and the estimate for the incurred but not reported non-held claims was \$4.63 million. He explained that the actuarial firm estimated the held claims determined eligible to claim against the Fund by June 30, 2021, to be \$9.18 million and the incurred but not reported held claims to be \$402,000. He said, in total, the estimated unpaid claim liability at June 30, 2021 is \$36.2 million which he pointed out is a decrease of \$2.2 million from the previous year and is primarily a result of the 142 claims being settled under the agreement with the major oil company.

Mr. Leasor said the estimated unpaid claims liability reports were submitted to the auditors as part of the audit process. He said the auditors then provided them to a separate actuarial firm, who reviewed them and provided a favorable opinion to the auditors on the soundness of the methods used to develop the estimate, and the reasonableness of the assumptions, selections, and findings.

In response to a question from Chairman Rocco, Mr. Leasor said the claims being held because of litigation were separated and an estimate was done by the Milliman actuarial firm. He said he reviewed the remaining claims flowing through the normal process and estimated them to total \$22 million. The Chairman questioned if that included an estimate of future claims and not just the in-house claims and Mr. Leasor confirmed that it did. Mr. Burks asked if the top row of the cumulative paid loss chart represents months and Mr. Leasor said it does. Chairman Rocco stated the amount of the held claims has gone down dramatically in the last few years particularly as a result of the settlement agreement with BP.

Warrant Issuance Update

Mr. Leasor reported that, as was mentioned at the Board's November meeting, the Treasurer of State stopped issuing checks for the Board effective December 31, 2021. He explained that he and Executive Director, Starr Richmond, had discussions with the Treasurer's Office and Huntington Bank and following those discussions a decision was made to set up check-writing capabilities in house. He said a check-writing procedure was developed to safeguard the process and he believed warrants will be issued without any problems. A draft copy of the Warrant Issuance Procedure was distributed to the Board members.

Chairman Rocco said there were two options to either outsource the check writing through electronic banking or for the staff to write the checks and mail them. He asked why writing checks in house was determined to be better than outsourcing it. Mr. Leasor said initially Huntington Bank indicated a listing of checks could be uploaded in a manner similar to what was done for the Treasury of State. However, it was later learned that this service is only available to entities writing a much larger number of checks each month. He said using the bank would require Board staff to login into the bank's system and manually reenter all of the check information. Additionally, further discussions revealed the bank has plans to outsource its check-writing process to another party, which could potentially cause issues in the future. He said ultimately it was decided that having the ability to issue checks when needed and

to have control over the process was the better option. Vice-Chairman Hull commented that from a customer service standpoint it is probably better off doing it internally.

The Chairman asked if a software upgrade was required and Mr. Leasor explained that a report was created for the existing STARRS (Statistical Tank and Reimbursement Records System) database, which pulls payment information from the database and then allows it to be printed onto check stock. Mr. Burks asked for clarification concerning the separation of duties and Mr. Leasor explained that one staff member controls the check stock, another enters the check information into the bank's and Treasurer of State's online systems, and once the checks are printed, the Director signs the checks. He noted that checks over \$25,000 require two signatures. He commented that there is a monthly audit of the check stock. Ms. Waggener asked if all checks would be hard copy or if checks would also be sent electronically and Mr. Leasor said all checks would be hard copy. Mr. Burks asked if ACH transfer was considered and Mr. Leasor said it was part of the discussions and the Board could move in that direction in the future. Mr. Stephenson commented that he felt using checks is safer than ACH transfers. Vice-Chairman Hull asked if the auditors had provided input on the check-writing procedure and Mr. Leasor explained that the procedure was drafted after the audit was completed but they will likely look at it during the next audit as part of their review of internal controls. The Chairman said members could look at the draft procedure and provide comments to Mr. Leasor or Director Richmond before it is finalized.

October and November Financials

Mr. Leasor said the October and November financials were emailed to each member. He said he would be discussing the November 2021 financial report.

Mr. Leasor reported, as of January 11, 2022, the unobligated account balance is \$17.6 million. He said this amount includes \$1.8 million in STAR Ohio (State Treasury Asset Reserve of Ohio) and \$15.8 million invested in U.S. treasuries and U.S. agency callable bonds. He said the obligated account balance for the payment of claims is \$4.1 million.

Mr. Leasor reported that, as of November 30, 2021, approximately 98.5% of the budgeted revenues, net of refunds, had been collected. He said information on refunds and fee collections would be presented as part of the compliance and fee assessment report.

Mr. Leasor reported that the claims expense for the month of November was \$1.2 million and to date, just under \$7.9 million has been paid for claims in fiscal year 2022. He pointed out that this is 65.7% of the \$12 million obligated by the Board for the payment of claims for the fiscal year and includes the third of the four payments to BP as result of a settlement agreement and release approved by the Board.

Mr. Leasor said as of November 30, 2021, expenses should be at 41.7% of the amount budgeted for the fiscal year. He reported that operating expenses for the month of November were approximately \$189,000. He said postage expenses were 76% of the amount budgeted. He said this was due to postage fees for the final quarter of fiscal year 2021 being paid in September of fiscal year 2022. He said these charges include fees for the annual fee statement mailing, which is sent by certified mail.

Mr. Leasor reported the legal and professional expenses were at 48.4% of the amount budgeted. He explained that these expenses included fees for the Assistant Attorney General services, the annual audit, and the services of the actuarial firm used to assist with the estimate of the unpaid claims liability. He 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 that, as of December 31, 2021, refunds totaling \$23,606 had been paid to 23 owners for program year 2021 and noted the amount of pending refunds totals \$1,488,056. She said \$1,900 of pending refunds had been used to offset outstanding fees this program year. She said as of December 31, 2021, the fees collected by the Attorney General's Office and Special Counsel less collection costs totaled \$49,999. She reported that, since July 1, 2021, outstanding fees for 120 accounts totaling \$417,050 had been certified to the Attorney General's Office for collection. She said the staff is working to certify the unpaid program year 2021 fees for collection and they should be sent before the next meeting.

Ms. Esquivel said there are three Orders Pursuant to Law currently under appeal and information to support the objections is expected. She said one Determination to Deny a Certificate of Coverage was under appeal and information to support the appeal was received and is under review.

Ms. Esquivel stated that no 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 3, 2022, Certificates of Coverage had been issued to 2,701 owners for program year 2021. She said there are 269 Applications for Certificates of Coverage currently being processed. She said for program year 2021, there are 34 owners with unresolved Pending Denials and 28 owners with unresolved Determinations to Deny a Certificate of Coverage.

Ms. Esquivel stated that there are 32 uncashed refund checks totaling \$29,063. She said there are 12 owners with pending refunds totaling [\$53,510] to whom more information request letters had been sent notifying them that additional information is needed before the refund may be issued. She said there are 37 owners with pending refunds totaling \$69,165 for which information had been requested through two notifications, but no responses have been received.

Vice-Chairman Hull said, looking back, the number of accounts certified for collection changed significantly every other year and asked why that was. Ms. Esquivel said the general schedule is to certify the program year fees in the year they are assessed but in certain years, the program year fees were not sent until the following year.

Claims Reports:

Chairman Rocco called on Hannah Brame, Claims Supervisor, to present the claims reports.

Ms. Brame reported, as of January 3, 2022, the total maximum liability of in-house open claims is approximately \$8.98 million. She said using the claim payout ratio of 78%, which is the average ratio over the past five years, the anticipated payout of unpaid in-house claims is about \$7 million.

Ms. Brame reported, as of January 3, 2022, a total of 507 claims with a total face value above the deductible amount were pending review and noted the claims staff are currently reviewing claims received prior to November 2021. She stated that 19 claim determinations were under appeal, as of January 3, 2022. She explained that these appeals pertain to only three release sites, as there are multiple appeals for two of those sites. She noted that the staff is waiting for information to support the appeals for 16 of the appealed determinations and additional information provided is under review for three appeals. She noted that since November 1, 2021, seven claim determination appeals were closed and no new claim determination appeals were received.

Ms. Brame stated that, as of January 3, 2022, a total of 236 claim packages were received and a total of 307 claim packages were settled this program year. She noted the settled claim packages included 278 claim determinations; eight that were closed because the total face values of the claims were below the deductible amount and the releases had received no further action status and therefore no payment could be issued; and 29 claim packages that were settled as a result of a December 1, 2021 lump-sum settlement of \$438,614 with Valero/Premcor with an average of 26.4% disallowed based on the historical data for that owner. She said the average payout per claim application this program year is \$13,395 and the average claim payout is 83.6% of the net claim value (face value – deductible). She noted that on average [13.4%] of the claim face value is disallowed as non reimbursable. The Chairman asked what the current processing time is for claims and Ms. Brame estimated that claims are being reviewed within 90 days.

Ms. Brame reported, so far for program year 2021, a total of 33 eligibility applications were received and 53 eligibility determinations were issued. She said of these eligibility determinations, 41 were approved and 12 were denied. She said the reasons for denial included three for no release demonstrated, four for late filing of the eligibility application, one for lack of a valid Certificate of Coverage, two for abandoned or out-of-compliance tanks, and two for no corrective action required by BUSTR. She stated that, as of January 3, 2022, a total of 97 eligibility applications were open. She noted that 16 applications were unreviewable until the necessary reports are received and more information has been requested for three applications. She noted that, as of January 3, 2022, seven eligibility determinations were under appeal. She said additional information is expected for two appeals and information for five appeals has been received and is under review. She noted that since November 1, [2021], four eligibility appeals were closed.

Ms. Brame reported, as of January 3, 2022, a total of 58 cost pre-approval requests were received. She said the cost pre-approval requests include 18 requests for new remedial action plans; 20 requests for annual costs for remedial action plans or free product recovery; three requests for an interim response action requiring BUSTR approval; seven requests for either Tier 3 or monitoring/calibration plans; eight cost exceedance notifications; and two voluntary requests for cost pre-approval. She said as of January 3, 2022, a total of 48 cost pre-approval notifications had been issued and 41 cost pre-approval requests were pending review. She noted that since January 3, 2022, eight additional cost pre-approval notifications had been issued.

New Business:

Hardship Application

Chairman Rocco called upon Don Leasor, Chief Fiscal Officer, to present the hardship application.

Mr. Leasor stated that the Board's rule 3737-1-08 provides for an owner experiencing financial hardship to apply for hardship status with the Fund. He said granting hardship status allows for the acceleration of the review of the claims submitted by the owner. He noted that granting hardship status does not increase the amount of reimbursement to the tank owner. He 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. He 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.

Mr. Leasor stated that, in determining hardship status, the application and a minimum of two years of income tax records are reviewed. He said, in addition, a 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 # 18344-0001/10/26/98, Owner – Red Stripe Associates, LLC

Mr. Leasor said Red Stripe Associates, LLC is the responsible party for a release discovered in 1998 at 50708 National Road in Saint Clairsville, Ohio. He said Gary Glessner submitted the application requesting the Board grant hardship status to the LLC. He noted this was Red Stripe Associates' 19th request for hardship status.

Mr. Leasor stated that to date, the Fund has reimbursed over \$335,700 for corrective action costs for this release and there are no claims in house pending review. He said the cost of corrective action work expected to be conducted over the next 24 months is estimated to be \$67,000.

Mr. Leasor said the property and business were sold in November 2008 and Red Stripe Associates provided financing to the new owner. He said Red Stripe Associates received the final payment in November 2013, which was used to pay the remaining mortgage on the property. He said no additional funds are being generated by Red Stripe Associates, LLC; therefore, the LLC is not in a position where it can acquire financing or self-finance ongoing corrective actions. He noted that Red Stripe Associates is still responsible for, and is continuing the corrective actions.

Mr. Leasor said the U.S. EPA financial model estimates a less than a 50% probability that Red Stripe Associates can afford the \$67,000 in corrective action costs estimated to be incurred within the next two years. Therefore, the Director is recommending the Board approve the application and grant hardship status to Red Stripe Associates, LLC. Vice-Chairman Hull moved to approve the application and Mr. Bergman seconded. A vote was taken and all members voted in the affirmative. The motion passed.

Certificates of Coverage – Ratifications:

Chairman Rocco called on Madelin Esquivel, Assistant Director, to present the lists of owners who have either been issued or denied a Certificate of Coverage for ratification by the Board.

Ms. Esquivel 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; 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. She said if a Certificate has not been issued in one of the prior two years and the tanks existed during those years, the owner must comply with rule 3737-1-04.1 by demonstrating the tanks are in compliance with the Fire Marshal's rules for the operation and maintenance of USTs.

Ms. Esquivel stated that, if the requirements are met, a Certificate is issued. She said if the requirements are not met, the Certificate is denied. She explained that if the Certificate is denied, the owner is provided with an opportunity to appeal the denial. She said that, throughout the denial process, the Board's staff works closely with the owner to resolve any deficiencies. She stated that all processes within the Board's rules and Revised Code were followed to make a determination to issue or deny the Certificates of Coverage.

Ms. Esquivel requested the Board ratify the Director's actions with respect to the issuance of the program year 2020 Certificates of Coverage for the two owners of the two facilities included on the program year 2020 Certificates issued list.

Vice-Chairman Hull moved to ratify the issuance of the 2020 Certificates of Coverage for the facilities listed. Mr. Ridi seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Esquivel requested the Board ratify the Director's actions with respect to the denial of the program year 2020 Certificates of Coverage for the 31 tanks located at the nine facilities included on the program year 2020 Certificates denied list.

Vice-Chairman Hull moved to ratify the denial of the 2020 Certificates of Coverage that were listed. Mr. Burks seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Esquivel requested the Board ratify the Director's actions with respect to the issuance of the program year 2021 Certificates of Coverage for the 76 owners of the 658 facilities included on the program year 2021 Certificates issued list.

Vice-Chairman Hull moved to ratify the issuance of the 2021 Certificates of Coverage for the tanks listed. Mr. Bergman seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Esquivel requested the Board ratify the Director's actions with respect to the denial of the program year 2021 Certificates of Coverage for the 68 tanks located at the 25 facilities included on the program year 2021 Certificates denied list.

Vice-Chairman Hull moved to ratify the denial of the 2021 Certificates of Coverage that were listed. Mr. Bergman seconded. A vote was taken and all members were in favor. The motion passed.

Confirm Next Meeting and Adjourn:

Chairman Rocco said there would be a Rules Committee meeting immediately following the meeting and the next Board meeting will be held on Wednesday, March 16, 2022, at 10:00 a.m.

Mr. Burks made a motion to adjourn the meeting and Mr. Ridi 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.