



# Petroleum Underground Storage Tank Release Compensation Board

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## MINUTES OF THE 174th MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD March 21, 2018

### BOARD MEMBERS IN ATTENDANCE

Jim Rocco  
Don Bryant  
Scott Fleming  
John Hull  
Tom Stephenson

### 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  
J.D. Pisula, 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
Jonathan Maneval	Executive Assistant, PUSTRCB
Lora Kruse	Claims Administrative Assistant, PUSTRCB
Hannah Brame	Claims Specialist, PUSTRCB
Leigh Bayer	Assistant Attorney General
Donna Waggener	Ohio EPA
Dan Adams	ATC Group Services LLC
Matthew and Alicia Miller	Former UST Owners

Minutes submitted by:

  
Jonathan Maneval  
Executive Assistant

**Call to Order:**

Chairman Rocco convened the one hundred seventy-fourth meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, March 21, 2018.

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

The following members were not in attendance: Mayor Falconi and Steve Bergman.

Chairman Rocco announced that Chris Geyer would be retiring from his position with the Ohio Environmental Protection Agency (EPA) and thanked him for his service and contribution to the Board. He introduced Donna Waggener, who was in attendance and will likely serve as the Ohio EPA Director's designee at future Board meetings.

Chairman Rocco introduced Leigh Bayer, who has been assigned as the Board's Assistant Attorney General, and welcomed her to the new position. He also introduced Hannah Brame, a former Board employee, who was recently rehired as the Claims Specialist.

**Minutes:**

Chairman Rocco asked if there were any comments or questions regarding the minutes from the February 14, 2018 Board meeting and there were none. Mr. Hills moved to approve the minutes. Mr. Geyer seconded. A vote was taken and Messrs. Fleming, Stephenson, Hills, Geyer, Pisula, and Rocco voted in the affirmative. Vice-Chairman Hull and Mr. Bryant abstained. 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 reported that the responsible party search for 94 of the 96 petroleum underground storage tank (UST) release sites being researched for the fiscal year had been completed. He stated that 41 grants totaling over \$5.8 million had been awarded through the Abandoned Gas Station Cleanup Grant Program and that a number of grant applications are currently being reviewed. The program is administered by the Ohio Development Services Agency, in partnership with the Ohio Environmental Protection Agency and BUSTR, and had \$20 million available to local government entities to cleanup abandoned gas station sites. He commended the Board's staff for addressing questions from site developers and land banks that had become involved in the program.

Mr. Hills reported that certified installer and certified inspector courses were conducted at the State Fire Marshal Academy with 19 individuals enrolled in these courses. He noted that all 19 students had passed the examinations.

Mr. Hills stated that the rule amendment to increase the annual registration fee from \$50 per tank to \$100 per tank was final filed on March 19, 2018, and would become effective on April 1, 2018.

Mr. Hills reported for the week ending March 10, 2018, there were 48 new inspections performed for a total of 5,245 inspections for the three-year inspection cycle. He said that 18 NFAs (no further actions) were generated during the week ending March 10, 2018, for a total of 215 NFAs for the grant cycle ending September 30, 2018.

Mr. Hills stated that as of March 10, 2018, there were 21,267 registered USTs and 3,596 owners of 7,197 registered facilities. He said the number of NFAs issued throughout the history of the BUSTR program totals 30,094.

### **Financial Reports:**

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

#### ***January Financials***

Mr. Leasor said the January 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 March 20, 2018, the unobligated account balance is \$26.8 million. He said this amount includes \$10.8 million in STAR Ohio (State Treasury Asset Reserve of Ohio) and the custodial account, and \$16 million invested in U.S. treasuries and U.S. agency callable bonds.

Mr. Leasor stated that at the June 2017 Board meeting, \$9 million was obligated for the payment of claims and the obligated account balance as of March 20, 2018, is \$4.2 million.

Mr. Leasor said that as of January 31, 2018, expenses should be at 58.3% of the amount budgeted for the fiscal year. He said the claims expense for the month of January was about \$548,000, and to date, approximately \$4.8 million had been paid for claims for fiscal year 2018.

Mr. Leasor reported that as of January 31, 2018, approximately 99.4% of the budgeted revenues, net of refunds, had been collected. He pointed out that in the month of January the unrealized loss on investments was \$60,700. He explained that for accounting purposes, the value of the investments are adjusted to the market value at the end of the month, and any unrealized gains or losses are reported. He said that the Board's investments are in short-term fixed rate U.S. treasuries and U.S. agency callable bonds, and the nature of the market value of these investments is an inverse relationship to any change in interest rates. He said that as interest rates rise, the market value of the investments will go down, but since the investments will be held until maturity, these losses are merely on paper, and the full par value of the investments will be received upon their maturity.

Mr. Leasor pointed out that as of January 31, 2018, miscellaneous income totaled \$9,800. He explained that this income was from rental fees paid by a tank owner who had rented a dual phase extraction (DPE) remediation system for which the Fund had paid the purchase cost to perform cleanups at sites that were not Fund-eligible.

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

Mr. Leasor reported that operating expenses for the month of January were approximately \$137,700. He said as of January 31, 2018, the expenses for temporary services were 106.9% of the amount budgeted and explained that this was due to the use of two contract employees to fill the Office Assistant and Collections Specialist positions. He said that since the February Board meeting, five new employees had been hired to fill vacant positions, two of which resulted from recent separations. He noted that all 16 staff positions are now filled with full-time permanent employees; and, as a result, expenditures for salaries will increase throughout the remainder of the fiscal year. Chairman Rocco asked if temporary service employees would be used as part of the annual fee assessment mailing and processing, and Mr. Leasor explained that because the Board is now fully staffed, it would not be necessary to use temporary employees. Vice-Chairman Hull asked if the extra temporary services expenses and the salary costs would offset at the end of the year. Mr. Leasor explained that because one vacant position was not filled with a temporary employee, he expects the actual combined temporary services and salary costs to be below the combined amounts in the budget.

Mr. Leasor stated that employee expenses were 125.9% of the amount budgeted. He explained that these expenses were for staff parking passes at the LeVeque Tower office location and the overage resulted from the move to the Executive Parkway location being delayed. He noted that telephone expenses were at 134.2% of the budgeted amount and explained that costs for the installation and setup of the internet connection and VoIP services for the new office location were higher than anticipated.

Mr. Leasor said postage expenses were 68.9% of the amount budgeted. He said this was due to postage fees for the final quarter of fiscal year 2017 being paid in August of fiscal year 2018. He said these charges include fees for the annual fee statement mailing, which is sent by certified mail.

Mr. Leasor stated that overall expenses are at or below where they should be at this time in the fiscal year.

Mr. Leasor said that he had an additional item for discussion concerning a consulting services agreement with Milliman Actuary Services. He said that each year an estimate of the unpaid claims liability is prepared, and that during the preparation of the previous year's claims liability estimate, it was noted that the review and settlement of claims for approximately 30% of all open Fund-eligible releases have been suspended. He explained that these suspended claims could potentially be impacting the development of the reserve estimate, and proposed that the Board contract with the actuarial firm Milliman Actuary Services to perform an evaluation of the claims that are being held from processing and to develop a liability estimate for that group of claims. He said that an estimate for the cleanup of all other eligible releases would be developed by the staff. He said the two estimates would be combined and compared against prior years' claim liability estimates in order to reveal the extent, if any, to which the suspended claims may be affecting the annual estimate.

Chairman Rocco commented that the liability estimate may currently be overstated because the actuarial software program used to develop the estimate is treating the suspended claims as being open claims. However, about 150 of the 225 eligible releases with claims being held have been granted NFA status, and additional claimed cleanup costs for these releases would not be expected in the future. He

said the concept of working with Milliman Actuary Services is to properly adjust the liability based on the NFA status and to provide guidance with the analysis going forward.

Following a brief discussion, Vice-Chairman Hull moved to authorize the Chairman to enter into a contract with Milliman Actuary Services in an amount not to exceed \$34,000 plus travel and related fees for the purpose of assisting the Fund in developing potential claim liability estimates for unpaid claims as of June 30, 2018. Mr. Geyer seconded. A vote was taken and all members were in favor. The motion passed.

Chairman Rocco called on Mr. Pisula to provide an update on the Board's investment portfolio. Mr. Pisula explained that the Board's investment portfolio is positioned with about a 50/50 split with STAR Ohio as the cash equivalent and about 50% in a bond ladder. He said that STAR Ohio remains a competitive cash option with yields currently at 1.6% and he expects the fund to continue to see good yields. He said the bond ladder has seen some mark to market losses, which is normal when entering a cycle of rate hikes. He noted that if there is a 1% move in interest rates, the result will generally be a 1% decrease in the market value of the portfolio. He explained that since the bonds are not actively being traded and they are held until maturity, that loss isn't material and the principal outlay made will be preserved. He said that \$3 million is set to mature over the next few months and recommended that those proceeds be reinvested in a similar manner.

#### **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 since July 1, 2017, refunds totaling \$26,868 have been paid out to 26 owners for the 2017 program year. She said as of February 28, 2018, there are 2,870 pending refunds totaling \$1,441,402. She said that \$9,945 in refunds has been used to offset outstanding fees.

Ms. Esquivel reported as of February 28, 2018, the fees collected by the Attorney General's Office and Special Counsel less collection costs totaled \$74,885. She pointed out that no accounts have been certified to the Attorney General's Office for collection this fiscal year. She said that a new staff member is preparing a certification that will likely be sent within the next few months.

Ms. Esquivel said that one Order Pursuant to Law is currently under appeal and information to support that appeal is expected. She said that one Determination to Deny a Certificate of Coverage is currently under appeal for which a hearing was held on August 3, 2017.

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

Ms. Esquivel reported that as of March 13, 2018, a total of 2,943 Certificates of Coverage have been issued thus far for program year 2017. She said there are 180 Applications for Certificates of Coverage currently being processed, 15 unresolved Pending Denials, and 26 unresolved Determinations to Deny a Certificate of Coverage.

Ms. Esquivel stated that there are 50 uncashed refund checks totaling \$38,747. She said there are 10 owners with pending refunds totaling \$32,610 to whom letters have been sent notifying them that more information is needed before their refunds may be issued. She said there are 30 owners with pending refunds totaling \$57,320 for which information had been requested, but no responses have been received.

### **Claims Reports:**

Chairman Rocco called on Lora Kruse, Claims Administrative Assistant, to present the claims reports.

Ms. Kruse reported that as of March 1, 2018, the total maximum liability of in-house open claims is \$30.6 million. She said using the historical average claim payout ratio of 75%, the anticipated claim liability of unpaid in-house claims is about \$23 million. She said currently, a total of 1,517 claims with a total face value above the deductible amount were pending review. She noted that claims received in the month of December 2017 are being reviewed by the staff. She noted that as of March 1, 2018, a total of 17 claim settlement determinations were under appeal. She said that since the February Board meeting, two appeals were resolved or closed and two new claim appeals were received.

Ms. Kruse reported that in the month of February a total of 50 claims were received and the staff settled 38 claims. She said she expects the productivity level to increase for the month of March. She noted that 38 claim settlements were mailed on March 16, 2018, and another settlement mailing is planned for March 30, 2018. She stated that the total claim settlement offer for the eight-month period of program year 2017 was \$4.6 million and the average per-claim payout was about \$12,014. She pointed out that this was slightly higher than the previous years' averages. She said that the average claim payout ratio of about 79.6% is also higher than previous years' averages.

Ms. Kruse said that in the month of February, 14 eligibility applications were received and one eligibility determination was issued. She noted the determination issued was a denial of eligibility because the application was filed late. She said so far in the month of March, six eligibility determinations were issued. She said for program year 2017, a total of 53 eligibility applications were received and 44 eligibility determinations were issued. She noted that of the 44 determinations, 20 were approved and 24 were denied. She said currently, 42 eligibility applications are pending review and seven determinations are under appeal.

Ms. Kruse reported that during the month of February, 11 cost pre-approval requests were received and five cost pre-approval notifications were issued. She stated that as of March 1, 2018, 35 cost pre-approval requests are pending review. She added that so far in the month of March, nine cost pre-approval notifications were issued.

### **Unfinished Business:**

#### ***Rule Adoption***

Chairman Rocco reminded members that prior to the February Board meeting, a public hearing was conducted concerning the proposed rule amendment to reduce the annual per-tank fee from \$400 to \$350. He said the rule was placed on JCARR's (Joint Committee on Agency Rule Review) consent agenda at its hearing in early March, and no testimony or comments were made at the hearing.

Chairman Rocco then requested a motion to adopt the proposed amendment to rule 3737-1-04 of the Ohio Administrative Code as presented at the public hearing of the Board on February 14, 2018, with an effective date of April 1, 2018. Vice-Chairman Hull so moved and Mr. Bryant seconded. Chairman Rocco called for a roll call. The following members voted in the affirmative: Messrs. Bryant, Fleming, Geyer, Hills, Hull, Pisula, Stephenson, and Rocco. There were no nays. The motion passed.

**New Business:**

***Hardship Applications***

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

Ms. Richmond stated that the Board's rule 3737-1-08 provides for an owner experiencing financial hardship to apply for hardship status with the Fund. She said granting hardship status allows for the acceleration of the review of the claims submitted by the owner. Ms. Richmond noted that granting hardship status does not increase the amount of reimbursement to the tank owner. She stated that accelerating the review of the claim reduces the financial burden the owner would experience if the claims were reviewed and settled in the normal course of business. She said, once granted, the hardship status remains in effect for a 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. Environmental Protection Agency (U.S. EPA) financial capacity test is used to evaluate the owner's cash flow and determine whether the owner is able to carry debt, in which case, the owner could finance the costs of corrective actions over time.

**Claim # 19104-0001/10/30/14, Owner – American United Oil Inc.**

Ms. Richmond said American United Oil Inc. is the responsible party for a 2014 release that was discovered at 342 East Main Street in Ashland, Ohio. She said, as an owner of 50% of American United Oil Inc., Salih Najar is requesting the Board grant hardship status to American United Oil Inc. She said this is the third request for hardship status, and, to date, the Fund has reimbursed \$354,000 for corrective actions for this release.

Ms. Richmond said American United Oil Inc. currently has no unsettled claims in-house and the estimated corrective action costs for the next year are \$220,000. She said this cost includes the remaining balance for the purchase of a DPE remediation system, along with the installation and testing, and the operation of the system with quarterly ground water monitoring and progress reporting.

Ms. Richmond pointed out that the real estate is not reported on the application, but noted that American United Oil has owned and operated the facility since 2001. She said the tanks were removed and replaced in the summer of 2015. She said the corporation's net income is \$26,000 annually, which is approximately 12% of the anticipated costs for the next year.

Ms. Richmond said that based on the information provided in the hardship application and IRS tax forms, the U.S. EPA financial model for corporations estimates a less than 50% probability the corporation can afford \$220,000 in corrective action costs.

Ms. Richmond recommended the Board approve the application and grant hardship status to American United Oil Inc. Vice-Chairman Hull moved to approve the application and Mr. Geyer seconded. A vote was taken and all members voted in the affirmative. The motion passed.

**Claim # 22239-0001/08/03/15, Owner – Harjasneet, LLC**

Ms. Richmond reminded the Board members that the Harjasneet, LLC hardship application had been presented to the Board at a previous meeting, and Mr. Stephenson recognized that there was some discrepancy with the application. She said the staff had worked with the owner to obtain corrected information.

Ms. Richmond said Harjasneet, LLC is the responsible party for a 2015 release that was discovered at 4871 Dixie Highway in Fairfield, Ohio, when the tanks at the facility were destroyed by lightning. She said, as a partner of the LLC, Harmit Singh is requesting the Board grant hardship status to the LLC.

Ms. Richmond said this is his third request for hardship status and to date, the Fund has reimbursed just under \$191,000 for corrective actions for this release. She noted that currently there are no claims pending review, and the cost of corrective action work expected to be conducted over the next 12 months is estimated to be \$113,000.

Ms. Richmond explained that Harjasneet, LLC (Harjasneet) is the owner of the real estate and Nekleen, LLC (Nekleen) is the operator of the convenience store located on the property. She explained that Mr. Singh and Mr. Kaur are both 50% owners of both Harjasneet and Nekleen. She noted that currently there are no petroleum tanks located at the site. She said as of the end of December 2016, Harjasneet, LLC had paid off all liabilities of that LLC and the only asset remaining in the LLC is the property, which is valued at \$475,000. She said that Harjasneet continues to record the monies reimbursed by the Fund as both an income and expense on its income tax returns. She stated that Nekleen does not pay rent to Harjasneet as generally would be seen when the business operator and owner of the real estate are separate. She said that since Nekleen had paid the annual per-tank fees and its ownership is essentially the same as Harjasneet, it seemed appropriate to also take into account the financial information for Nekleen and evaluate both LLCs in order to determine the need for hardship status.

Ms. Richmond said that based on the U.S. EPA Ability to Pay Analysis, Harjasneet can afford zero dollars in corrective action costs, and based on Nekleen's projected cash flow over the next three years, there is a 96% probability that it can afford the \$113,000 in corrective action costs. She noted that Nekleen, LLC does not have sufficient cash flow, so it would be required to finance the cost over a three-year period with an annual payment of about \$40,000. She noted that Nekleen reported annual income of about \$42,000.

Ms. Richmond said that given that Nekleen does not have sufficient annual cash flow to self-finance the \$113,000 in corrective action costs and additional costs can be expected in subsequent years, she was recommending the Board approve the application and grant hardship status to Harjasneet, LLC. Chairman Rocco asked why the real estate it is not shown on the application if Harjasneet is the owner of the property. Ms. Richmond explained that the application was not completed correctly and noted that the EPA model uses information from the IRS tax forms plus the monthly expenses. Chairman Rocco then questioned why information for an LLC that is not the responsible party was used in the evaluation. Ms. Richmond explained that because Nekleen is not paying any rental fees to Harjasneet



to operate the business at the site, it does not appear they are keeping the two LLCs financially separated. She noted that ownership is essentially the same since the same two gentlemen own both LLCs. She also noted that the claims are being paid directly to a consultant, so neither LLC is actually outlaying any monies.

Chairman Rocco asked if there were any other questions and there were none. Vice-Chairman Hull moved to approve the application and Mr. Fleming seconded. A vote was taken and all members voted in the affirmative. The motion passed.

### **Certificates of Coverage – Ratifications:**

Chairman Rocco called upon Starr Richmond, Executive Director, to present the lists of owners who have either been issued or denied a Certificate of Coverage for ratification by the Board.

Ms. Richmond said the lists behind Tabs 9 and 10 are listings of facilities that since the February Board meeting, had been issued or denied a program year 2016 or 2017 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 identified, notice is provided to the owner in accordance with the Board's rules. The owner is provided 30 days to respond to the notice with information to correct the deficiency or compliance issue. If correcting information is not received within this time, a determination denying the Certificate of Coverage is issued to the owner.

Ms. Richmond said the Board's rules and the Revised Code make provisions for an appeal of the determination. 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 2016 program year Certificates of Coverage for the 14 facilities included on the list behind Tab 9.

Vice-Chairman Hull moved to ratify the issuance of the 2016 Certificates of Coverage for the facilities listed. Mr. Geyer seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Richmond requested the Board ratify her actions with respect to the denial of the 2016 program year Certificates of Coverage for the two facilities included on the list behind the Tab 9 green divider page.

Vice-Chairman Hull moved to ratify the denial of the 2016 Certificates of Coverage that were listed. Mr. Fleming seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Richmond requested the Board ratify her actions with respect to the issuance of the 2017 program year Certificates of Coverage for the 64 facilities included on the list behind Tab 10.

Vice-Chairman Hull moved to ratify the issuance of the 2017 Certificates of Coverage for the facilities listed. Mr. Fleming seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Richmond requested the Board ratify her actions with respect to the denial of the 2017 program year Certificates of Coverage for the 23 facilities included on the list behind the Tab 10 green divider page.

Vice-Chairman Hull moved to ratify the denial of the 2017 Certificates of Coverage that were listed. Mr. Geyer seconded. A vote was taken and all members were in favor. The motion passed.

**Confirm Next Meeting and Adjourn:**

Chairman Rocco said the next Board meeting will be held on Wednesday, June 13, 2018, at 10:00 a.m.

Vice-Chairman Hull made a motion to adjourn the meeting and Mr. Bryant seconded. All were in favor.