



# Petroleum Underground Storage Tank Release Compensation Board

P.O. Box 2280 • Westerville, Ohio 43086-2280  
Phone: (614) 752-8963 • Fax: (614) 752-8397  
www.petroboard.org

**MINUTES OF THE 198th MEETING OF THE  
PETROLEUM UNDERGROUND STORAGE TANK  
RELEASE COMPENSATION BOARD  
March 15, 2023 – 10:00 a.m.**

**BOARD MEMBERS IN ATTENDANCE**

Jim Rocco  
John Hull  
Steve Bergman  
Don Bryant  
Larry Burks  
Scott Fleming  
Tom Stephenson

**EX-OFFICIO MEMBERS IN ATTENDANCE**

Scott King, representing Director Sheryl Creed Maxfield, Ohio Department of Commerce  
Michael Lenzo, 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
Beth Fligner	Assistant Attorney General

Minutes submitted by:

  
Jonathan Maneval  
Executive Assistant

**Call to Order:**

Chairman Rocco convened the one hundred ninety-eighth meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, March 15, 2023.

The following members were in attendance: Jim Rocco; Steve Bergman; Don Bryant; Larry Burks; Scott Fleming; John Hull; Tom Stephenson; Scott King, representing Director Sheryl Creed Maxfield, Ohio Department of Commerce; and Michael Lenzo, representing Robert Sprague, State Treasurer of Ohio.

The following members were not in attendance: Dan Ridi and Donna Waggener, representing Director Anne Vogel, Ohio Environmental Protection Agency.

**Minutes:**

Chairman Rocco asked if there were any comments or questions regarding the minutes from the February 8, 2023 Board meeting and there were none. Vice-Chairman Hull moved to approve the minutes and Mr. Stephenson seconded. A vote was taken and all were in favor. The minutes were approved as presented.

**BUSTR Report:**

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

Mr. King said much of the information in the BUSTR report was the same as was reported at the February Board meeting. He reported that the number of no further actions (NFAs) issued increased to 132 and new inspections and re-inspections are continuing to increase. He said, as was mentioned at the previous meeting, they are seeing an influx of different permits as three major players are changing their format throughout the state. He mentioned that 15 installation permit applications were received from one owner in the previous week and over the next 30 days, they will be working through those tank installations.

Mr. King said the State Fire Marshal/BUSTR has been monitoring the situation in East Palestine and is working with an underground storage tank (UST) owner whose tanks are in close proximity to the train derailment location. He said they are coordinating efforts to ensure the UST contractors and inspection teams can safely move into the area and place the USTs out of service as the recovery efforts continue.

Mr. King said in the last month many meetings were held with legislators discussing funding and budgets. He said there are also new conversations concerning the storage of hazardous substances. He said BUSTR inspects hazardous tanks and the U.S. Environmental Protection Agency (U.S. EPA) is asking BUSTR to look at further involvement. Chairman Rocco asked in what perspective they want BUSTR further involved and Mr. King explained that the U.S. EPA has always provided oversight of corrective actions of hazardous substance releases. He said the U.S. EPA has a limited amount of funding to cover these remediations and noted it can take a long time to remediate hazardous substance

releases. He said the U.S. EPA is looking to the states to assist in oversight and closing out of the corrective actions because they do not have the staff to handle everything.

### **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. Mr. Leasor reported, as of March 14, 2023, the unobligated account balance is \$17.7 million. He said this amount includes \$3.7 million in STAR Ohio (State Treasury Asset Reserve of Ohio) and the custodial account, and \$14 million invested in U.S. treasuries and U.S. agency callable bonds. He said the obligated account balance for the payment of claims is \$4.9 million.

Mr. Leasor reported that, as of January 31, 2023, approximately 98.3% of the budgeted revenues, net of refunds, had been collected. He said information on refunds and fee collections would be presented later as part of the compliance and fee assessment report.

Mr. Leasor reported the claims expense for the month of January was \$606,000 and to date \$4.2 million has been paid for claims in fiscal year 2023. He said this is 46.8% of the \$9 million obligated by the Board for the payment of claims for the fiscal year and includes the final payment to BP as result of the Settlement Agreement and Release approved by the Board.

Mr. Leasor said as of January 31, 2023, expenses should be 58.3% of the amount budgeted for the fiscal year. He said the rent expense increased from the previous month's rent expense due to a 1.8% increase in operating costs. He noted the rent expense paid in January included the increased operating costs for both January and February.

Mr. Leasor said as of January 31, 2023, postage expenses were 67.9% of the amount budgeted. He said this was due to postage fees for the final quarter of fiscal year 2022 being paid in August of fiscal year 2023. He said these charges include fees for the annual fee statement mailing, which is sent by certified mail. He reported legal and professional expenses were 68.5% of the amount budgeted. He said this includes the payments for Assistant Attorney General services for the fourth quarter of fiscal year 2022, and the first and second quarters of fiscal year 2023; payment for offsite data backup and software updates to the backup hardware; and payment for the annual audit and actuarial services for the unpaid claims liability estimate. He said all other expenses are at or below where they should be at this time in the fiscal year.

Mr. Leasor noted the claims refund revenue shown for January is the settlement payment from Sunoco of \$3.2 million less the attorney fees and mentioned that a \$167,500 settlement payment was received in February as part of a settlement agreement and release, where a tank owner alleged a petroleum release was caused by a contractor's faulty work, and the Fund had reimbursed the corrective action costs. He reported that operating expenses for the month of January were approximately \$194,000.

Mr. Burks noted that \$5,000 is budgeted for travel and asked if the staff ever attends conferences such as the Brownfields Conference. Chairman Rocco said staff has attended the U.S. EPA's UST

conference in the past and a small amount is budgeted for conferences and other things that may come up during the year. Mr. Burks mentioned that he attended a few Brownfields Conferences in the past and he found there was a great deal of value in attending. He said he would encourage looking into it.

### **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, 2022, a total of \$176,260 in refunds was paid to 122 owners. She said the amount of pending refunds currently totals \$1,407,470. She said \$37,975 of pending refunds had been used to offset outstanding fees.

Ms. Esquivel said since July 1, 2022, the fees collected by the Attorney General's Office and Special Counsel less collection costs totaled \$76,067. She noted that no accounts had been certified to the Attorney General's Office for collection since July 1, 2022. She said accounts with the current program year's unpaid fees will likely be certified for collection before the next meeting.

Ms. Esquivel reported that four Orders Pursuant to Law are currently under appeal and information to support the appeals is expected. She said three Determinations to Deny a Certificate of Coverage were under appeal and information to support one of these was received and is under review. She said information to support the other two appeals is expected.

Ms. Esquivel stated that one Ability to Pay Application is 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 Certificates of Coverage had been issued to 2,837 owners for program year 2022. She said there are 40 Applications for Certificates of Coverage currently being processed. She said for program year 2022, there are 65 owners with unresolved Notices of Pending Denial and 54 owners with unresolved Determinations to Deny a Certificate of Coverage.

Ms. Esquivel stated there are 37 uncashed refund checks totaling \$44,958. She said there are 17 owners with pending refunds totaling \$97,686 to whom more information request letters had been sent notifying them that additional information is needed before the refund may be issued and we are waiting on a response. She said there are 40 owners with pending refunds totaling \$69,415 for which information had been requested, but responses were not received by the response deadline.

### **Claims Reports:**

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

#### ***Claims Statistics and Summary Reports***

Ms. Brame reported, as of March 1, 2023, the total maximum liability of in-house open claims is approximately \$9.87 million. She said using the claim payout ratio of 79%, which is the average ratio over the past five years, the anticipated payout of unpaid in-house claims is about \$7.8 million.

Ms. Brame reported, as of March 1, 2023, a total of 524 claims with a total face value above the deductible amount were pending review and noted that review of one of these claims is pending receipt of requested information. She said the claims staff is currently reviewing claims received prior to September 2022. She stated that 21 claim settlement determinations were under appeal, as of March 1, 2023. She explained that these appeals pertain to only five release sites, as there are multiple appeals for two of those sites. She noted the staff is waiting for information to support the appeals for two of the appealed determinations, additional information provided is under review for two appeals, and a hearing is scheduled for 17 of the appeals.

Ms. Brame stated that, as of March 1, 2023, a total of 304 claims were received and a total of 354 claim determinations were issued this program year. She noted that no payment could be issued for 40 of these claims as the total face values were below the deductible amount and the releases had received NFA status, meaning no additional corrective actions were required. She said the average payout per claim application this program year is \$12,070 and the average claim payout is about 72% of the net claim value (face value – deductible). She noted that on average 22.9% of the claim face value is disallowed as nonreimbursable. She commented that the averages this program year are impacted by a December 2022 Settlement Agreement and Release with Sunoco in which 10 claim packages totaling \$318,554 were closed without review and no payment was issued.

Ms. Brame reported so far for program year 2022, a total of 47 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 one for no release demonstrated, three for late filing of the application, one for lack of a valid Certificate of Coverage, two for out-of-compliance USTs, and five for no corrective actions being required by BUSTR.

Ms. Brame stated that, as of March 1, 2023, a total of 94 eligibility applications were open. She noted that 12 applications were unreviewable until the necessary reports are received and more information has been requested for six applications. She noted that, as of March 1, 2023, 10 eligibility determinations were under appeal. She said additional information is expected for two appeals, information for seven appeals has been received and is under review, and a hearing was held for one eligibility appeal.

Chairman Rocco said late filing seems to still be an issue and asked if it is a certain type of owner or particular consultant, and if anything can be done by the Board. Executive Director, Starr Richmond, said it is probably the one-station owners filing late. She commented that a list of new releases is pulled from BUSTR's database and an outreach letter is sent to the owners with new releases notifying them of the one-year filing deadline and they still do not timely file an application. She said sometimes the ATG (automatic tank gauging) system is reporting a failure and perhaps a month will go by before they report the problem. She said the tank owner will use that report date rather than the date of the failure on the ATG. The Chairman said when the denials for no Certificate of Coverage, no release, and no corrective actions being required are taken out, late filing is probably the biggest reason for eligibility denials.

Ms. Brame reported, as of March 1, 2023, a total of 67 cost pre-approval requests were received. She said the cost pre-approval requests include 10 requests for new remedial action plans (RAPs); 30

requests for annual costs for remedial action plans or free product recovery; three requests for interim response actions requiring BUSTR approval; nine requests for either Tier 3, monitoring or calibration plans; five cost exceedance notifications; and 10 voluntary requests for cost pre-approval. She said as of March 1, 2023, a total of 66 cost pre-approval notifications had been issued and 42 cost pre-approval requests were pending review.

### ***Summary of Active Remedial Action Plans***

Ms. Brame directed members to a table in the members' notebooks titled Summary of Active Remedial Action Plans.

Ms. Brame reminded members that at the November 30, 2022 Board meeting there was a discussion regarding the status of remedial action plans. She said in response to questions raised at that meeting, an evaluation of the status of active RAPs was conducted and is shown in the summary table. She said there are currently 85 active RAPs, which are categorized in the table based on the type of technology used. She said there are 40 sites using active operation, maintenance, and monitoring. She said these RAPs include permanent and mobile dual phase extraction (DPE) systems. She said 37 sites are using in situ technologies, which include chemical injections for in situ chemical oxidation, bio-remediation, and things of that nature. She said there are four sites using excavation and disposal of soil and there are four sites primarily doing groundwater monitoring, with or without an oxygen release compound amendment.

Ms. Brame pointed out the data is further divided on the table between sites with an actual duration that is within one year of the planned duration and sites with an actual duration exceeding the planned duration by more than one year. She said the focus of the evaluation was the RAPs for which ongoing operation, maintenance, and monitoring substantially exceeded the original planned duration. She pointed out that this data is shown in bold in the shaded row of the table. Vice-Chairman Hull asked if the remaining duration is known for the sites exceeding the planned duration. Chairman Rocco said for the purposes of the evaluation, the summary only shows the number of RAPs exceeding the timeframe set out in the RAP and a range of years the duration was exceeded.

Chairman Rocco said a question is whether the remediation plan ought to be rethought for sites where monitoring has been going on and on and \$0.5 million of monitoring costs has been accumulated. He said most RAPs are focused on groundwater and reaching a target level in groundwater. He said one challenge is figuring out what to do when a soil issue is directly or indirectly affecting the groundwater. He commented that DPE systems will not do a lot of good if the soil in itself is the potential source to the groundwater. He said this just allows natural infiltration to continue to move contaminants into the groundwater and then the groundwater is used as a way of recovery. Vice-Chairman Hull called it soil washing and said it is a legitimate remediation approach except that it takes a long period of time and can be very expensive.

Chairman Rocco said BUSTR may want to do a comprehensive review of some of the sites exceeding the planned duration by many years to figure out why they were unable to achieve the cleanup in a reasonable timeframe. He said for the sites where \$0.5 million was spent on a DPE system plus monitoring, a question in his mind is if that \$0.5 million could have been spent on the front end and the cleanup been done in a year or two. Mr. Stephenson said a complication is the majority of tank

owners are not engineers or environmental people and are reliant on the environmental company they hire and the BUSTR site coordinator to come up with the remediation plan. He said it is questionable if the owner would even care about saving costs once they are over the deductible. Vice-Chairman Hull said a further complication is third-party exposure. He said sometimes the groundwater pump-and-treat system is the fastest way to minimize the impact. He said this could be the correct interim measure to restrict the extent of a plume offsite but may not be the right end remedy.

Ms. Brame said of the 85 active RAPs, only 12 are currently in the operation and maintenance phase and have gone beyond the estimated duration by more than a year. She said of those 12 RAPs, one has reached the Fund's maximum payment amount; BUSTR has already requested a re-evaluation for one of them; four are planning on pursuing additional risk based corrective actions; one is being evaluated to see whether the system can be shut down; and three are in the process of completing post-system operation sampling and reporting. She said ultimately there are just two sites remaining that may need to be looked at to re-evaluate what is being done. She commented that it is pretty encouraging that only two RAPs should be looked at.

Ms. Brame stated the average pre-approved amount for the 12 sites is about \$337,000 and noted there is a significant range in the pre-approved amount from site to site because of substantial differences in the scope and the total duration, which impact that average. She said groundwater monitoring accounts for about 10% of the total RAP costs, on average. She noted that the average cost depends on the technology, the number of wells being sampled, and how often they are sampled. She said anecdotally it seems immediate corrective actions and free product recovery of big incidents seem to really impact the duration of corrective actions. She said another factor impacting the duration is the age of the release and noted that older releases might go through multiple rule sets, with there being more costs for site assessment, evaluation, and implementation of multiple RAPs after moving to a new rule.

Ms. Brame mentioned that results have not been received for quite a few in situ RAPs because the implementation has not been very long. Vice-Chairman Hull asked if a second application has been needed for the in situ remediations that have had results come back. Ms. Brame said it is frequently seen that they come back for a second or third injection. Vice-Chairman Hull asked if the multiple applications is put in the original corrective action plan and Ms. Brame said typically only one injection is in the plan. Vice-Chairman Hull said it is probably a good idea to do a second treatment if the first dose knocks the contaminants down. Ms. Brame said of the in situ RAPs listed, 28 of them are for sites that had a previous RAP technology and did not achieve an NFA. Chairman Rocco said he has seen in situ remediations work very well and it will be interesting to see how those work long term. He said Ms. Brame did a great job putting the summary together and said it gives the Board a place to focus on some issues.

### **Unfinished Business:**

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

Chairman Rocco reminded members that prior to the February Board meeting, a public hearing was conducted concerning the proposed amendment to rule 3737-1-04. He said the rule was placed on JCARR's (Joint Committee on Agency Rule Review) consent agenda 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 8, 2023, and set an effective date of July 1, 2023. Vice-Chairman Hull so moved and Mr. Stephenson seconded.

Chairman Rocco asked if there was any discussion and Mr. Burks asked if the word “person” throughout the rule language is meant as a designated individual that signs off on applications and noted that individuals at companies change all the time. The Chairman said it is meant as the responsible person, which is a defined term. He said a responsible person is generally not a specific individual and can be any person representing an entity. Assistant Attorney General, Beth Fligner agreed and said “person” should not be read by itself as it is meant to be read together.

Mr. Burks noted the change concerning notification to the Fire Marshal of determinations. He asked if the Fire Marshal was comfortable with the change to no longer receive copies of the determinations by mail. Executive Director Richmond said the proposed change was discussed with the previous BUSTR Chief who indicated nothing was being done with the determinations. She said the change will allow for a list of determinations to be sent instead of having to provide copies of the letters. Chairman Rocco said the broader language allows for the notification to be sent electronically by email.

Chairman Rocco asked if there were any other questions and there were none. He then called for a roll call. The following members voted in the affirmative: Messrs. Bergman, Bryant, Burks, Fleming, Hull, Stephenson, King, Lenzo, and Rocco. There were no nays. 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 2021 Certificates of Coverage for the three owners of the three 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 facilities listed. Mr. Fleming 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 2022 Certificates of Coverage for the 34 owners of the 47 facilities included on the program year 2022 Certificates issued list.

Vice-Chairman Hull moved to ratify the issuance of the 2022 Certificates of Coverage for the tanks listed. Mr. Fleming 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 2022 Certificates of Coverage for the 105 tanks located at the 36 facilities included on the program year 2022 Certificates denied list.

Vice-Chairman Hull moved to ratify the denial of the 2022 Certificates of Coverage that were listed. Mr. Burks seconded. A vote was taken and all members were in favor. The motion passed.

#### **Executive Session:**

Chairman Rocco stated that an executive session was needed and 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. Bergman so moved and Vice-Chairman Hull seconded. The Chairman called for a roll call. The following members voted in the affirmative: Messrs. Bergman, Bryant, Burks, Fleming, Hull, Stephenson, King, Lenzo, and Rocco. There were no nays. The motion passed.

#### ***Reconvene Meeting***

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

Chairman Rocco stated that based on the members' discussions, a motion was needed to authorize the Chairman, Vice-Chairman, and Executive Director in consultation with the Assistant Attorney General and Special Counsel to make all decisions regarding the Board's subrogation litigation against Ashland LLC and Shell Oil Company, and to negotiate and reject or accept any offers to settle the litigation but specifically excluding the approval of any final settlement agreement, which shall be approved by a quorum of the Board. Vice-Chairman Hull so moved and Mr. Stephenson 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 14, 2023, at 10:00 a.m.

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