



# Petroleum Underground Storage Tank Release Compensation Board

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## MINUTES OF THE 149th MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD November 20, 2013

### BOARD MEMBERS IN ATTENDANCE

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

### EX-OFFICIO MEMBERS IN ATTENDANCE

Bill Hills, representing Director Andre Porter, Ohio Department of Commerce  
Chris Geyer, representing Scott Nally, Ohio Environmental Protection Agency  
Bob Field, representing Josh Mandel, State Treasurer of Ohio

### OTHERS IN ATTENDANCE

Starr Richmond	Executive Director, PUSTRCB
Madelin Esquivel	Assistant Director, PUSTRCB
Don Leasor	Chief Fiscal Officer, PUSTRCB
Cindy Duann	Claims Supervisor, PUSTRCB
Homayoun Sharifi	Environmental Claims Analyst, PUSTRCB
Jonathan Maneval	Administrative Coordinator, PUSTRCB
John Hickey	Fiscal Specialist, PUSTRCB
Cindy Knight	Accounts Receivable Analyst, PUSTRCB
Carla Dowling-Fitzpatrick	Assistant Attorney General
Erin Abbot	Schneider Downs
Jodi Handlin	BJAAM Environmental Inc.
Will Latt	Speedway, LLC
Doug Darrah	Cardno ATC
Dan Adams	Cardno ATC
Christie Kuhlmann	Stantec Consulting Services Inc.
Shavonne Gordon	Antea Group

Minutes submitted by:

  
Jonathan Maneval  
Administrative Coordinator

**Call to Order:**

Chairman Rocco convened the one hundred forty-ninth meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, November 20, 2013. The following members were in attendance:

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

The following member was not in attendance: Stephen Hightower.

**Minutes:**

Chairman Rocco asked if there were any comments or questions regarding the minutes from the September 4, 2013 Board meeting, and there were none. Vice-Chairman Hull moved to approve the minutes. Mayor Kuchta seconded. A vote was taken and the following members voted in the affirmative: Ms. Hilvert and Messrs. Rocco, Hull, Kranz, Kuchta, Stephenson, Hills and Field. Mr. Geyer abstained. The motion passed.

**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 Revolving Loan Fund rule was filed with the Joint Committee on Agency Rule Review, and should be effective at the end of January. A public hearing concerning the proposed rule will be held on December 19, 2013. He said BUSTR is working with Department of Commerce fiscal department on the application form, screening criteria and loan agreement associated with the program.

Mr. Hills stated that the LUST (leaking underground storage tank) grant monies were received and included an additional \$98,000 to be used for responsible party searches. BUSTR is taking the steps necessary to select vendors for this project.

Mr. Hills said BUSTR has scheduled an UST installer course in February and an UST inspector course in March at the Ohio Fire Academy. Mr. Hills said the State Fire Marshal will be hosting the U.S. EPA Region 5 underground storage tank installer seminar in late March 2014.

Mr. Hills stated that the OTTER (Ohio Tank Tracking & Environmental Regulations) database and Click Scheduling are operating with only minor issues. Click scheduling is a GPS driven computer program that geographically schedules the inspectors to visit facilities that are located in the same geographical area.

Mr. Hills reported that for the week ending November 8, 2013, 72 inspections were performed for a total of 1,458 inspections for the three-year inspection cycle ending June 30, 2016. He said 12 NFAs were generated during this same time period for a total of 63 for the grant cycle ending September 30, 2014.

Mr. Hills stated that roughly 22,000 USTs are registered, and there are about 3,745 owners of 7,526 registered facilities.

Chairman Rocco asked who will attend the Region 5 installer seminar. Mr. Hills responded saying installers and inspectors from the six states that make up Region 5 are expected to attend. Chairman Rocco recommended that if the training satisfies the certified installer refresher training requirement, the Ohio Petroleum Contractors Association be notified.

Mayor Kuchta offered to assist in notifying political subdivisions of the Revolving Loan Fund Program.

### **Financial Report:**

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

### ***Audit Report***

Mr. Leasor stated that a draft copy of the audited financial statements and supplementary financial information for the years ending June 30, 2013 and 2012 has been distributed to each member. He introduced Erin Abbot, representative from the accounting firm of Schneider Downs, to present the draft of the financial statements.

Ms. Abbot thanked Executive Director, Starr Richmond and Chief Fiscal Officer, Don Leasor for their diligent work throughout the audit and noted that it was the earliest the audit has been completed. She said following the Board members' review, the audit would be filed with the Auditor of State prior to the December 31, 2013 deadline.

Ms. Abbot reported that Schneider Downs would issue an unqualified opinion indicating the Board's financial statements are materially correct and present fairly the financial position of the Board as of June 30, 2013.

Ms. Abbot pointed out that management's representation of the Board's financial performance during fiscal year 2013 along with the overview of the financial statements is found in the Management's Discussion and Analysis section of the report.

Ms. Abbot stated that as a result of the Governmental Accounting Standards Board's Statement No. 63, the presentation of the financial statements has changed to illustrate the net position. On page 8 of the report, the Statements of Net Position shows assets, then liabilities, followed by the net position.

Ms. Abbot briefly discussed fluctuations from the prior year, long term investments, the reserve for unpaid claims, the unrestricted net position and the Statements of Revenues and Expenses and Changes in Net Position. She reported that overall there was an increase in net position of \$8 million from the prior year. She reviewed the Statements of Cash Flows indicating there was positive net cash provided by activities. She provided a brief overview of the statement footnotes.

Ms. Abbot said Schneider Downs is required by the Auditor of State to verify the organization is compliant with the Ohio Revised Code, the Ohio Compliance Supplement and laws that might

affect the organization. There were no significant deficiencies or material weaknesses noted and this resulted in a clean report on internal control and compliance over financial reporting as well as laws and regulations.

Ms. Abbot stated that management uses significant estimates in the financial statements, including the allowance for doubtful accounts and the reserve for unpaid claims. Schneider Downs consulted with an actuary to assist in establishing a reasonable assessment of management's calculations of the reserve for unpaid claims.

Ms. Abbot said, in Schneider Downs' opinion, there were no transactions entered into without authoritative guidance and that all significant transactions occurred in the proper period. She said there were no difficulties in performing or completing the audit, and there were no audit adjustments.

Chairman Rocco requested that each member take time to review the draft financial statements, and if there were questions or comments, to contact Ms. Richmond or Mr. Leasor before December 6, 2013.

#### ***August and September Financials***

Mr. Leasor said the August and September financials were emailed to each member. He asked if there were any questions or concerns regarding these reports, and there were none.

Mr. Leasor reported that, as of November 19, 2013, the unobligated balance was \$18.9 million. He said this included \$12.9 million in STAR Ohio and the \$6 million invested in US treasuries and US agency callable bonds. He reported that the balance in the obligated account as of November 19, 2013 was approximately \$7.1 million.

Mr. Leasor said tank revenues would be discussed during the presentation of fee statement statistics.

Mr. Leasor pointed out the interest income section of the report now shows interest earned and the unrealized gain or loss resulting from the fluctuation in the market value of investments. He said as of September 30, 2013, interest earnings were \$5,200.

Mr. Leasor said the claims expense for September was approximately \$533,000, and as of November 19, 2013, \$1.9 million has been paid for claims for fiscal year 2014.

Mr. Leasor said the total operating expenses for October were \$130,000. He said as of September 30, 2013, postage expense was 57% of the amount budgeted. He said this is due to postage fees for the final quarter of fiscal year 2013 being paid in August of fiscal year 2014. He said these charges include fees for the annual fee statement mailing which is sent by certified mail.

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

#### ***Fee Statement Statistics***

Mr. Leasor said as of November 19, 2013, the per-tank fees collected for program year 2013 were approximately \$13.5 million, which represents 96% of the billed amount. He said between

July 1, 2013 and November 19, 2013, approximately \$196,000 was collected for prior year fees, net of refunds of \$39,000.

Mr. Leasor said for program year 2013, 16,100 tanks were billed at the standard deductible (\$55,000) and 5,500 tanks were billed at the reduced deductible (\$11,000). Mr. Leasor said as of November 19, 2013, the number of tanks for which fees have been paid at the standard deductible rate is 14,900 and at the reduced deductible rate is 5,600. He said fees for a total of 20,530 tanks were paid by 3,232 owners. He said this compares to fees being paid for 20,605 tanks by 3,279 owners for the same period of time in the previous fiscal year.

Mr. Leasor said program year 2012 fees have been paid for a total of 21,072 tanks by 3,340 owners.

Mr. Leasor stated that the \$13.6 million collected to date represents 97.6% of the \$14 million budgeted for program year 2013. He said the 20,530 tanks with fees paid for program year 2013 represents 99.2% of the 20,700 tanks anticipated to be assured this year.

**Compliance/Fee Assessment Report:**

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

Ms. Esquivel reported that, as of October 31, 2013, \$36,615 in refunds has been paid to 38 owners for program year 2013, which began July 1, 2013. She said the amount of pending refunds totals \$1,391,781.

Ms. Esquivel stated that as of October 31, 2013, for program year 2013, a total of \$75,950 was used to offset outstanding fees. She explained that this number is higher than previous years as a result of a major reconciliation of the Ohio Department of Rehabilitation and Correction account.

Ms. Esquivel stated that as of October 31, 2013, a total of \$89,380 was collected by the Attorney General's Office and Special Counsel for program year 2013. She said after deducting the collection costs of \$31,879, the net amount received by the Board is \$57,502.

Ms. Esquivel said as of October 31, 2013, 79 accounts totaling \$127,880 has been certified to the Attorney General's Office for collection.

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

Ms. Esquivel said three 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 November 13, 2013, Certificates of Coverage have been issued to 3,027 owners. She said there are 227 Applications for Certificates of Coverage currently in process.

Ms. Esquivel stated that there are 53 uncashed refund checks that total \$38,070. She said there is \$63,130 in refunds pending for 57 owners from whom more information has been requested.

Ms. Esquivel said the Attorney General's Office has instituted a new program called the Offset Program, in which that office matches individual debtors' attributes in a data match system to find individual social security numbers. The social security number is matched with any tax refund, lottery winnings or unclaimed funds. Any identified funds are then held and applied to the debt with the oldest debts being paid first. She said \$80 million of the \$465 million collected in total by the Attorney General's Office last year was collected through the Offset Program. The Attorney General's Office collected \$1,156 for the Board through the Offset Program last year.

### **Claims Report:**

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

Ms. Duann reported that, as of November 1, 2013, the total maximum liability of in-house open claims is \$29.6 million. She said using the historical average claim payout ratio of 70%, the anticipated claim liability of unpaid in-house claims is about \$20.7 million. She stated that, as of November 1, 2013, a total of 2,138 Fund eligible sites have been issued NFAs with an average cleanup cost of \$128,650 per site. She said after applying the deductibles, the average net value of each site is \$95,450, and after removing the disallowed costs, the average payout per closed site is \$69,173. She said this is approximately 72.5% of the average net value.

Ms. Duann said as of November 1, 2013, there were 1,779 claims pending review and 21 claim settlement determinations under appeal.

Ms. Duann noted that there was an error in the report, and the total number of all sites is 2,902, not 2,092.

Ms. Duann reported that during the first four months of program year 2013, July through October, the Board received an average of 86 claims per month, and an average of 74 claims per month were settled. She said as of November 1, 2013, the total claim settlement offer was just over \$2 million with an average claim payout of 76% of the net value. This is slightly higher than previous years.

Ms. Duann reported that, as of November 1, 2013, nine eligibility applications are pending review and five eligibility determinations are under appeal. She stated that during the first four months of program year 2013, a total of ten eligibility applications were received and during that same period of time, 30 eligibility determinations were issued. Twenty-six or 87% of these determinations were approvals. She said this approval rate is higher than in previous years.

Ms. Duann said for the first four months of program year 2013, a total of 64 requests for cost pre-approval were received and 73 cost pre-approval notifications were issued. Of the cost pre-approvals received, 14 included a new RAP (remedial action plan) and 17 were requests for

annual RAP cost pre-approvals. She reported that, as of November 1, 2013, 39 cost pre-approvals are pending review.

**New Business:**

***Finance Committee Report***

Chairman Rocco said the Finance Committee met in early November to discuss a number of issues.

Chairman Rocco said the committee reviewed the Board's investment policy, and is not recommending changes to the policy. He stated that the first \$2 million of investments will mature in May 2014, and the committee will meet in early 2014 to determine whether to reinvest those monies. He said the committee will also discuss how to address the cash that has accumulated from interest on the investments; specifically whether to reinvest this money or move it into the unobligated account.

Chairman Rocco reported that the committee also reviewed the Board's collections policy, and the committee is recommending no changes to the policy. He noted that the Attorney General's use of the Offset Program to collect on delinquent accounts does not change the policy.

Chairman Rocco said the committee also discussed the Fund fees, which are reviewed annually to determine whether changes are needed. He called upon Don Leasor, Chief Fiscal Officer, to present the pro-forma financial statements to the Board.

Mr. Leasor stated that two versions of the pro-forma financial statements were provided in each member's notebook. The first version shows a \$100 per-tank fee decrease in fiscal year 2015 with claim payments of \$9 million annually, and the second version shows a \$100 per-tank fee decrease in fiscal year 2015 with claim payments of \$11 million annually.

Mr. Leasor explained that the pro-forma statements presented were created using certain assumptions. These assumptions include a \$100 per-tank fee decrease to \$500 per tank for coverage at the standard deductible, and \$700 per tank for coverage at the reduced deductible. Additional assumptions concerned fee revenue and expense projections through fiscal year 2018.

Mr. Leasor said, based on the assumptions used, the first version of the pro-forma financial statements projects an unobligated ending balance of \$29 million and an estimated claim liability of \$6.6 million at the end of fiscal year 2018. He stated that the second version of the pro-forma financial statements is based on the same assumptions as the first version with the exception of increases in administrative expenses to reflect the hiring of a fifth Environmental Claims Analyst and in the amount of claims paid annually to \$11 million. He said the second version projects an unobligated ending balance of \$22 million and an estimated claim liability of zero at the end of fiscal year 2018.

Chairman Rocco explained that the Finance Committee reviewed reducing the annual per-tank fees as well as maintaining the current fee structure. He said if no changes were made to the annual fees, there would be a significant increase in the unobligated balance through the end of fiscal year 2018. After reviewing the projected revenues, the Finance Committee is recommending the annual fees be reduced by \$100 per tank for the upcoming fiscal year.

Chairman Rocco said the committee also looked at whether there was an ability to speed up claims reimbursement, and whether sufficient cash flow was available to pay out claims at a faster rate. He said currently the review of claims is constrained by staffing limitations. He said the committee is recommending hiring an additional claims analyst, and by adding another analyst, an additional \$2 million in claims is projected to be processed on an annual basis. Considering the economic benefit to the tank owners and other constituencies, he recommended a concerted effort be taken to hire an additional claims reviewer.

Chairman Rocco requested a motion to adopt the recommendation of the Finance Committee to amend paragraph H of Ohio Administrative Code 3737-1-04 to decrease the annual fee from \$600 per tank to \$500 per tank.

Mayor Kuchta so moved. Vice-Chairman Hull seconded. Chairman Rocco noted that by changing the annual fee for the standard deductible to \$500 per tank, the annual fee for the reduced deductible will change to \$700 per tank. Following a short discussion, a vote was taken and all members voted in the affirmative. The motion passed.

### ***Meeting Dates***

Chairman Rocco said the proposed rule change will be filed with JCARR (Joint Committee on Agency Rule Review), and it will be necessary to hold a public hearing on February 19, 2014 at 9:00 a.m. to present the proposed rule change. A Board meeting will be held immediately following the public hearing.

Chairman Rocco said the Board meeting previously scheduled for March 12, 2014, must be moved to Thursday, March 20, 2014, to allow for the amended rule to be adopted by the Board after the rule leaves JCARR jurisdiction.

Chairman Rocco requested the Board meeting previously scheduled for November 19, 2014, be moved to November 12, 2014.

### ***Hardship Application***

Chairman Rocco called upon Starr Richmond, Executive Director, 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 a hardship allows for the acceleration of the review of claims submitted by the owner. Ms. Richmond said this 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. Ms. Richmond said at that time, the owner may reapply and submit updated financial information and be considered for a one year extension of hardship status.

Ms. Richmond stated in determining hardship status, the application and a minimum of two years 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.

Ms. Richmond stated there is one application for hardship status being presented today.



**Claim #4808-0001/02/02/90, Owner – Harold Saurers**

Ms. Richmond said as the owner of Rod Kicks Marathon, Mr. Saurers is the responsible person for a 1990 release that occurred on Spruce Street in Wooster, Ohio. She said this is the third request for hardship status submitted by Mr. Saurers. To date, the Fund has reimbursed about \$60,000 for corrective action costs at the site, and there is an additional \$12,000 that is pending payment. She said corrective actions costs for the next 12 months are anticipated to be \$100,000.

Ms. Richmond said based on the information provided on Mr. Saurers' application, his annual household expenses and debt payments exceed his annual income which consists primarily of pension and social security benefits. She said he has some limited assets including real estate and automobiles, and he is the owner of Wooster Ignition, Inc. She noted that Wooster Ignition has operated at a loss for the past few years. Ms. Richmond said based on the U.S. EPA financial capacity test, it is highly unlikely Mr. Saurers has the ability to afford the corrective actions that are anticipated to be conducted in the next 12 months.

Ms. Richmond recommended the Board approve the application and grant hardship status to Mr. Saurers. Vice-Chairman Hull moved to approve the hardship application. Mayor Kuchta seconded and a vote was taken. All members voted in the affirmative. The motion carried.

**Certificates of Coverage – Ratifications:**

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

Ms. Richmond said that behind Tabs 9 and 10 are listings of facilities that, since the September Board meeting, have been issued or denied a program year 2012 or 2013 Certificate of Coverage.

Ms. Richmond said the process used to review the fee applications and issue or deny a Certificate of Coverage includes a review for completeness to determine full payment was received; financial responsibility for the deductible has been demonstrated; and, the owner has certified with his signature that he is in compliance with the State Fire Marshal's rules for the operation and maintenance of petroleum underground storage tanks. She said if these requirements are met and if the tanks existed in previous years, a certificate for the subject tanks has been issued to the owner in at least one of the prior two years, then a Certificate of Coverage is issued.

Ms. Richmond explained that if deficiencies or compliance issues are discovered, notice is provided to the owner in accordance with the Board's rules. The owner is provided 30 days to respond to the notice with information to correct the deficiency or compliance issue. If correcting information is not received within this time, a determination denying the Certificate of Coverage is issued to the owner.

She said the Board's rules and the Revised Code make provisions for an appeal of the determination. Ms. Richmond said that throughout this process, the Board's staff works with the owner to correct the fee statement record and if necessary, refers the owner to BUSTR to correct the registration record.

Ms. Richmond requested the Board ratify her actions with respect to the issuance of the 2012 program year Certificates of Coverage for the two facilities included on the list behind Tab 9.

Vice-Chairman Hull moved to ratify the issuance of the 2012 Certificates of Coverage for the facilities listed. Mr. Geyer seconded. A vote was taken and all members voted in the affirmative. The motion passed.

Ms. Richmond requested the Board ratify her actions with respect to the denial of the 2012 program year Certificates of Coverage for the five facilities included on the list behind the Tab 9 green divider page.

Mr. Geyer moved to ratify the denial of the 2012 Certificates of Coverage that were listed. Mr. Hills seconded. A vote was taken and all members voted in the affirmative. The motion passed.

Ms. Richmond requested the Board ratify her actions with respect to the issuance of the 2013 program year Certificates of Coverage for the 193 owners of 616 facilities included on the list behind Tab 10.

Mr. Geyer moved to ratify the issuance of the 2013 Certificates of Coverage for the facilities listed. Mr. Hills seconded. A vote was taken and all members voted in the affirmative. The motion passed.

Ms. Richmond requested the Board ratify her actions with respect to the denial of the 2013 program year Certificates of Coverage for the six facilities included on the list behind the Tab 10 green divider page.

Mr. Geyer moved to ratify the denial of the 2013 Certificates of Coverage that were listed. Mr. Hills seconded. A vote was taken and all members voted in the affirmative. The motion passed.

### **Committee Meetings:**

Chairman Rocco stated that the Rules Committee will meet following the February 19, 2014 Board Meeting, and the Finance Committee will meet following the March 20, 2014 Board meeting.

### **Executive Session:**

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

Prior to moving into executive session, Chairman Rocco requested to be recused from the executive session. Chairman Rocco turned the meeting over to Vice-Chairman Hull.

***Reconvene Meeting***

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

**Confirm Next Meeting and Adjourn:**

Chairman Rocco stated that the next Board meeting will be on Wednesday, January 15, 2014, at 10:00 a.m.

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