
THE UST PIPELINE

News from the Petroleum UST Release Compensation Board

James R. Rocco, Chairman

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ENVIRONMENTAL CONSULTANT PLEADS GUILTY TO FRAUD

Dennis Smalley, President of Lancaster-based Smalley & Associates, Inc. (SAI), pled guilty to four felony counts for defrauding three state agencies - Ohio EPA, the Bureau of Underground Storage Tank Regulations (BUSTR) and the Petroleum UST Release Compensation Board (the Board). SAI was contracted by several property owners to perform environmental cleanups of petroleum releases at their sites.

In 2005, BUSTR officials noticed inaccuracies in Smalley's well logs and notified the Board, the Attorney General's Environmental Enforcement and the Bureau of Criminal Identification & Investigation (BCI&I) Sections. The criminal investigation expanded to include Ohio EPA's Voluntary Action Program (VAP) and Office of Special Investigations. In a cooperative investigation by these state offices, investigators determined that Smalley committed fraud and theft by charging or overcharging the owners of certain sites for work that he did not do. Investigators found that Smalley forged sampling documents and falsified data relating to the condition and construction of groundwater monitoring wells, submitted sampling data from nonexistent wells and lab results for tests that may never have been conducted.

Smalley would take samples from soil borings and monitoring wells to determine the extent of contamination at sites where petroleum or hazardous substances had leaked into the soil and ground water. He would then submit this data to Ohio EPA and BUSTR in an attempt to show that no further cleanup was needed at the site.

Smalley's falsified site work and analytical results would show that contaminated sites had been remedied, when further sampling by Ohio EPA and BUSTR later showed that these sites were, in fact, still contaminated and worse than reported. At one site, where groundwater contamination extended

beyond the property boundary, the false reports caused concern for the local public water supply and posed a threat to human health.

Mr. Smalley submitted fraudulent claims and invoices to the Board for costs relating to the work reportedly performed at sites with petroleum releases from underground storage tanks. The Board's staff relied on this false information and the fraudulent reports submitted to BUSTR to reimburse Smalley and SAI more than \$100,000. When fraud has been committed against the Board, fraud has been committed against each and every one of Ohio's underground storage tank owners.

Smalley also pled guilty to submitting false data, documents and reports to Ohio EPA and withholding or concealing data and other information from Ohio EPA pursuant to its Voluntary Action Program. The VAP gives companies an opportunity to investigate possible contamination of their property and clean it up

voluntarily with minimal Ohio EPA oversight. Smalley was a VAP certified professional and the first VAP certified professional to be prosecuted criminally.

Smalley was sentenced to 22 months of electronic monitoring and 60 days in jail. In addition, Smalley and his company were ordered to pay \$300,000 in restitution and a fine of \$40,000. The fine will be suspended if Smalley pays the full restitution. Those receiving restitution include: the Board (\$100,000), Ohio EPA (\$35,000 to the Voluntary Action Program and \$35,000 to the Office of Special Investigations), BUSTR (\$20,000 to the Corrective Action Program) and the Ohio Attorney General's Office (\$60,000). Smalley also has agreed to never reapply for his professional certification.

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LIMITED POWER OF ATTORNEY

At its September 2008 meeting, the Board approved the use of a Limited Power of Attorney for Signature Delegation (PoA) for the filing of claim reimbursement and cost pre-approval applications, certification affidavits, and direct payment authorizations. The form is intended to facilitate the filing of these forms in instances where a new property owner, the attorney-in-fact, is voluntarily continuing the corrective actions for the responsible person (RP) of a prior release of petroleum.

Prior to the Board approving the use of the PoA, the RP at the time the release was first suspected or confirmed was required to sign all applications and make requests for pre-approval even if the facility was sold and the new property owner continued the corrective actions. In instances, where the RP was no longer available to submit applications, the new owner did not have access to the Fund. The PoA will allow the RP to authorize the new owner, as an attorney-in-fact, to file forms with the Board. In addition, the attorney-in-fact may complete a direct payment authorization to instruct the Board to make payment directly to another party.

The PoA does not limit the liability of the RP and does not grant standing to the attorney-in-fact to appeal any order or determination of the Fund's director. This right resides solely with the RP at the time the release was first suspected or confirmed.

The signature delegation is effective upon approval of the Fund's director and the RP or the director may revoke it at any time by providing written notification. In addition, the RP agrees to indemnify the Board of any claims that may arise against the Board because of its reliance on the PoA. The form is available on the Board's website at www.petroboard.com/forms.htm or may be obtained by calling the Board's office.

BOARD WELCOMES TWO NEW STAFF MEMBERS

Donald Leasor joined the Board's staff in June as the Chief Fiscal Officer. As the CFO, his responsibilities include the supervision of accounting operations and staff; preparing the financial reports, budgets, and annual estimate of the Fund's claim liability; directing the accounts receivable process; and maintaining the Board's computer systems. Prior to coming to the Board, he worked as the Development Officer and Manager of the Central State University Foundation in Wilberforce, Ohio for 13 years where he was responsible for the accounting and reporting operations of the Foundation and supervision of its staff. Donald is a graduate of Wright State University with a Bachelor of Science in Marketing, Accounting, and Management Information Systems. He volunteers with the National Ski Patrol at Mad River Mountain in Bellefontaine, Ohio.

Donna Kestler joined the Board's staff in August as the Claims Administrative Assistant where she supports the claims staff by managing the claim and preapproval applications workflow, responding to public inquiries regarding eligibility and claim issues, and assisting the Claims Supervisor with processing applications for eligibility. Donna worked for nearly ten years in the Worthington Public Library system as a supervisor in the circulation department of the Old Worthington and Northwest Libraries. She received a Bachelor of Arts in Anthropology with a concentration in biomedical research and public health from Ohio State University. Donna volunteers her time for various public health and charitable organizations, such as Friends of the Homeless and the Mid-Ohio Workers Association. She is also a Masonic youth group leader and building manager of the Northwest Masonic Temple.

GOVERNOR STRICKLAND RE-APPOINTS TWO BOARD MEMBERS AND NAMES NEW MEMBER



John H. Hull was originally appointed in August 1994 as a representative of professional engineers. Mr. Hull received a Bachelor of Science in Civil Engineering from Ohio Northern University and a Masters of Science in Civil Engineering from Stanford University, and is currently president of Hull & Associates, Inc., a professional environmental engineering consulting firm. Mr. Hull is a registered professional engineer in 13 states and is recognized as a Board Certified Environmental Engineer by the American Academy of Environmental Engineers. He is also a member of various environmental and professional organizations, and participates on several academic advisory boards and other regional efforts, such as the Ohio Lake Erie Commission's Balanced Growth Initiative Technical Advisory Committee and the Partners for Clean Streams.

John was re-elected Vice Chairman of the Board at the recent September meeting.



Donald J. Kuchta was originally appointed to the Board as a representative of petroleum dealers in August 1999. He is past owner and operator of an auto repair facility in Maple Heights and a Sunoco station in Macedonia and had been in the service station industry for 33 years. He is a past president of the Ohio Petroleum Retail and Repair Association (OPRRA). Mr. Kuchta remains on the Board of Directors for the Great Lakes Petroleum Retailers and Allied Trades Association. He has served on numerous state and national boards representing dealers, including two years as chairman of the National Sunoco Traditional Dealer Council. Mr. Kuchta was also chairman of the Future Growth Committee, which was charged with guiding development of the City of Macedonia. Mr. Kuchta was re-elected Mayor of the City of Macedonia for a 4-year term commencing January 3, 2008. He is a member of the Summit County Mayor's Association and the Northeast Ohio Mayor Association.



Stephen L. Hightower was appointed to the Board in August 2008. In 1984 Mr. Hightower started Hightowers Petroleum Co. as a licensed motor fuel dealer.

With foresight and continuing innovation, Hightowers Petroleum Co. developed a "Virtual Market Place" throughout the United States with the ability to provide gasoline, diesel, bio-diesel, ethanol, and lubricants, oils, and greases in 48 states and most counties in the USA.

Mr. Hightower currently remains active in international activity that began in 1984. Hightowers Petroleum Co. has relationships with most of the major oil companies in the USA and continues to be a leader in the industry and provide value to its customers.

Mr. Hightower is a "Corporate Round Table Member" of the National Association of Black State Legislators (NBCSL) and holds memberships in the Society of Independent Gasoline Marketers Association (SIGMA), National Association of Convenient Stores (NACS), and American Association of Blacks in Energy.

Others currently serving on the Board include: Board Chairman James R. Rocco, Principal, Sage Risk Solutions; Thomas G. Stephenson, President, Stephenson Oil; Brian Epperson, Corporate Manager Remediation, Speedway SuperAmerica LLC; Duane Cable, Manager, Motorists Insurance; Thomas Kmiec, President, TD Kmiec & Associates; Cheryl Hilvert, City Manager, City of Montgomery; and ex-officio members Kimberly Zurz, Director of Commerce; Chris Korleski, Director of EPA; and State Treasurer Richard Cordray.

BULLETIN BOARD

“SURFING PETROBOARD”

Have you been “surfing” the net lately? Many of your questions about the Board and Fund coverage can likely be answered by information available 24-hours a day, seven days a week on the Board’s website at www.petroboard.com. Things like:

- Unclaimed Funds List
- Property transfer information
- Downloadable forms, including notifications of installations and removals, and eligibility, claim and cost preapproval applications
- Certificate of Coverage Addendum
- Meeting dates & minutes of prior meetings
- Previous Newsletters
- Contact information
- Ohio Revised and Administrative Code sections pertaining to the Board
- And so much more!

CERTIFICATE PROCESSING

As of November 2008, the Board’s staff has processed 3,810 facility Certificates of Coverage for over 10,600 USTs. Again this year, there are three main deficiencies resulting in the delayed issuance of the Certificates.

Many owners did not demonstrate financial responsibility for the selected deductible amount. In addition, undocumented increases and decreases in the number of tanks reported annually and discrepancies in the tank and piping BUSTR registration data continue to result in the delayed issuance of Certificates. Since BUSTR is beginning to rely more heavily on data obtained through inspections, when necessary, the Board’s staff is requesting copies of inspection reports in order to resolve discrepancies in the reported data.

Over the coming weeks, the staff will continue to work with owners to resolve paperwork and compliance issues, and to gather documentation to resolve tank count inconsistencies. If you have any questions regarding your Certificate, please contact the Board’s staff at 614-752-8963.

CLAIM SETTLEMENTS

During the first quarter of this program year (July – September), the Board’s staff has settled more than 180 claims, totaling about \$1.3 million. An additional \$7.7 million is anticipated to be paid by the end of the program year, June 30, 2009.

In the history of the program, the Fund has reimbursed Ohio’s owners over \$180 million in costs incurred for remediating petroleum contamination at almost 2,600 sites. Of this amount, the Fire Marshal has issued a no further action determination for approximately 1,690 sites.

Based on information supplied to the Board in claim reimbursement applications, the average cost to clean up a petroleum release is over \$121,000 and the average Fund payout per release is nearly \$66,000.

TEMPORARY CLOSURE

If you take your tanks out of service for more than 90 days, you must obtain a temporary closure permit from BUSTR. If the tanks will be out of service for more than one year, prior to the end of the 12 month out of service period, an owner must perform a closure assessment and request an extension from the Fire Marshal to allow the tanks to remain in the ground.

Failure to obtain a temporary closure permit or a timely extension to the 12 month out of service period may result in your Certificate of Coverage with the Fund being denied or revoked. Without a valid Certificate, you will be unable to receive reimbursement for corrective action costs associated with an accidental release from your tanks.

More information regarding these requirements is available at www.com.state.oh.us/SFM/bust/.