



# Petroleum Underground Storage Tank Release Compensation Board

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## MINUTES OF THE 120<sup>th</sup> MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD January 9, 2008

### BOARD MEMBERS IN ATTENDANCE

Jim Rocco  
Duane Cable  
Brian Epperson  
Cheryl Hilvert  
Don Kuchta  
Tom Stephenson

### EX-OFFICIO MEMBERS IN ATTENDANCE

Lori Stevens, representing Kimberly A. Zurz, Director, Ohio Department of Commerce

### OTHERS IN ATTENDANCE

Starr Richmond	Executive Director, PUSTRCB
Ellen Mitton	Administrative Coordinator, PUSTRCB
Cindy Duann	Environmental Claims Supervisor, PUSTRCB
Krista Nichols	Accounts Receivable Specialist, PUSTRCB
Nicole Johnson	Assurability Coordinator, PUSTRCB
John Hickey	Fiscal Specialist, PUSTRCB
Carol Anne McConnell	Claims Administrative Assistant, PUSTRCB
Cheryl Hawkinson	Assistant Attorney General
Jay Meglich	Schneider Downs
Roy Lydic	Schneider Downs
Andy Shrock	Parsons
Tim Wilfong	Speedway SuperAmerica
Doug Darrah	ATC Associates
Mike Shumaker	Speedway SuperAmerica
Megan Lashutka	Ohio Petroleum Council
Suzanne Fisher	McMahon, DeGulis
Pete Chace	BJAAM

Minutes submitted by:

Ellen S. Mitton  
Administrative Coordinator

## **Call To Order:**

Immediately following the 10:00 a.m. Public Hearing for the Board's proposed rule amendments, Chairman Rocco convened the one hundred twentieth meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, January 9, 2008, at 10:15 a.m. The following members were in attendance: Jim Rocco; Tom Stephenson; Mayor Don Kuchta; Brian Epperson; Cheryl Hilvert; Duane Cable; and, Lori Stevens, representing Director Kimberly Zurz, Ohio Department of Commerce.

The following members were not in attendance: Chris Glaros, representing State Treasurer Richard Cordray; Chris Geyer, representing Christopher Korleski, Director, Ohio Environmental Protection Agency; John Hull; and, Nancy Kister.

Chairman Rocco asked if there were any comments, questions, or discussions regarding the minutes from the November 14, 2007, board meeting and there were none. Ms. Hilvert moved to approve the minutes. Mayor Kuchta seconded the motion. A vote was taken and all were in favor. The motion carried.

## **Ratification of Previous Motions**

Chairman Rocco explained that due to an administrative error, Mr. Tom Kmiec had not yet been reappointed as a member of the Board. The chairman stated that pursuant to R.C. 3737.90(A), if a Board member is not immediately reappointed, that member continues in the capacity of a Board member for sixty days after the term has expired or until a new member is appointed, whichever occurs first. Mr. Kmiec's appointment expired on July 11, 2007. Therefore, the sixty days expired on September 11, 2007. Chairman Rocco said that because Mr. Kmiec seconded motions in both the September 12 and November 14, 2007, Board meetings, the Board needed to ratify the motions that were seconded by Mr. Kmiec.

Chairman Rocco presented the motions that Mr. Kmiec seconded in the September 12, 2007 meeting:

"Chairman Rocco entertained motions from the floor for nominations for officers for the upcoming year. Mayor Kuchta nominated Mr. Jim Rocco to continue in his role as Chairman and Mr. Kmiec seconded. Hearing no other nominations, Mayor Kuchta made a motion to close the nominations and to elect Jim Rocco as the Chairman. Mr. Kmiec seconded. A roll call vote followed. The following members voted in the affirmative: Messrs. Rocco, Hull, Cable, Epperson, Kmiec, Kuchta, Stephenson, Geyer, and Mss. Hilvert, Stevens, and Kister. There were no nays and the motion passed. Mr. Rocco will remain as the Chairman."

Mayor Kuchta moved to ratify the original motion as stated in the above paragraph. Mr. Stephenson seconded and a vote followed. All were in favor and the motion passed.

Chairman Rocco said that in the next motion "Mayor Kuchta nominated Mr. John Hull to remain as the Vice Chairman. Mr. Kmiec seconded. Hearing no other nominations, Mayor Kuchta moved to close the nominations and to elect John Hull as Vice Chairman. Mr. Kmiec seconded. A roll call vote followed. The following members voted in the affirmative: Messrs. Rocco, Cable, Epperson, Kmiec, Kuchta, Stephenson, Geyer, and Mss. Hilvert, Stevens, and Kister. Mr. Hull recused himself from the vote. The motion passed. Mr. Hull will remain as Vice Chairman."

Mayor Kuchta moved to ratify the original motion as stated in the above paragraph. Mr. Stephenson seconded and a vote followed. All were in favor and the motion passed.

Chairman Rocco indicated the motions seconded by Mr. Kmiec at the November 14, 2007, meeting were as follows:

“Mr. Stephenson moved to authorize the Chairman or Vice Chairman to authorize Cheryl Hawkinson, Assistant Attorney General, to participate in lawsuits to be brought about by BUSTR. Mr. Kmiec seconded and a vote was taken. All were in favor and the motion passed.”

Mr. Stephenson moved to ratify the original motion as stated in the above paragraph. Mayor Kuchta seconded and a vote followed. All were in favor and the motion passed.

“Mr. Hull moved to authorize the Chairman, in conjunction with the Search Committee, consisting of John Hull, Tom Stephenson, and the Chairman, to work with Ms. Richmond to develop a job description, set qualifications, and go forward with the advertising and implementing the search; and to set a maximum salary amount of \$75,000 for the position of Chief Fiscal Officer. Mr. Kmiec seconded.”

Mr. Cable moved to ratify the original motion as stated in the above paragraph. Mayor Kuchta seconded and a vote followed. All were in favor and the motion passed.

“Mayor Kuchta moved to amend the motion to set the salary of the CFO at a maximum of \$73,800. Mr. Kmiec seconded. A roll call vote followed. Messrs. Rocco, Hull, Cable, Kmiec, Kuchta, Stephenson, Geyer, Glaros, and Mss. Stevens and Kister voted in the affirmative. Ms. Hilvert voted nay. The motion passed.”

Mayor Kuchta moved to ratify the original motion as stated in the above paragraph. Ms. Hilvert seconded and a vote followed. All were in favor and the motion passed.

“Mr. Hull moved to vote on the original motion as amended by setting a salary at a maximum amount of \$73,800 for the position of Chief Fiscal Officer. Mr. Kmiec seconded and a roll call vote followed. The following members voted in the affirmative: Messrs. Rocco, Hull, Cable, Kmiec, Kuchta, Stephenson, Geyer, Glaros, and Mss. Hilvert, Stevens, and Kister.”

Mr. Cable moved to ratify the original motion as stated in the above paragraph. Mayor Kuchta seconded and a vote followed. All were in favor and the motion passed.

### **BUSTR Report:**

Chairman Rocco called upon Ms. Lori Stevens, Acting Bureau Chief, BUSTR, to present the BUSTR report.

Ms. Stevens stated that at the end of December the Bureau of UST Regulations posted positions for four new BUSTR inspectors. The postings were for Mahoning, Lucas, Hamilton, and Franklin Counties. She said that this will help tremendously to meet the Federal Energy mandate to conduct on site inspections for each UST in Ohio every three years.

Ms. Stevens said that on December 7, 2007, a trial was held in Stark County Common Pleas Court for the BUSTR case of *State of Ohio v. Donald Coen, et. al.* (Case No. 2007-CV-02973). She said that on December 28, 2007, the Judge rendered the decision in favor of the State. The State of Ohio was awarded a penalty against the defendants totaling over 1.5 million dollars. Ms. Stevens said that prior to the trial, default judgment was granted in respect to the corporations: Coen Company, Rocket Oil and Carlton B. Land Company. Individual liability was found against Donald Coen for two of the corporations: Carlton B. Land Company and Rocket Oil. She said

that the case addressed a total of seven sites in Stark County: three sites needing corrective actions to address known releases and four sites currently containing improper out of service USTs. Prior to the trial, the State had settled with Robert Coen for three sites that he personally owns in Stark County. Ms. Stevens said that BUSTR has pending cases against Donald Coen, et. al, in seven additional counties.

Ms. Stevens said that the Domenici-Barton Energy Policy Act of 2005 is Federal legislation signed into law on August 8, 2005. This Act amended federal laws governing the underground storage tank program and would place notable additional requirements on the state of Ohio. She said that the BUSTR Rule Revision Advisory Committee (“committee”), consisting of UST owners and/or operators and other interested parties in Ohio, would meet on January 30, 2008, to finalize drafts of the Ohio Administrative Code section 1301:7-9-06 and section 1301:7-9-07 to comply with recent changes in the federal law. She stated the committee also plans to propose language regarding delivery prohibition.

### **Financial Report:**

Chairman Rocco called upon Mr. John Hickey, Fiscal Specialist, to present the Financial Report. Prior to his report, Mr. Hickey introduced Mr. Jay Meglich and Mr. Roy Lydic from Schneider Downs to discuss the 2007 fiscal year audit. Chairman Rocco indicated that a copy of the final draft audit had been distributed to each Board member.

Mr. Meglich stated that Schneider Downs is in its final year of a five-year contract that will expire with the June 30, 2008 audit. He said that although the contract is for five years, Schneider Downs has actually been involved a relatively short period of time. He stated that during the past 18 months they have been able to audit and issue opinions for four years, including the 2007 report presented today.

Mr. Lydic was introduced and presented a summary of the 2007 audit report. He stated Schneider Downs identified one significant deficiency in internal control. However, this does not rise to the level of a material weakness. The deficiency relates to management’s ability to produce a detailed accounts receivable aging schedule which could result in management making estimates relating to collectible accounts that may result in less accurate estimations of collectability. This issue was also identified in the 2006 audit.

Chairman Rocco called upon Executive Director Richmond to provide further explanation. Ms. Richmond said the Board currently estimates fees receivable using an historical collection average determined as a percentage of annual and late fee amounts collected versus those certified to the Ohio Attorney General’s Office for collection. She stated that during the 2006 audit she consulted with the auditors regarding alternative ways to estimate the Board’s allowance for uncollectible accounts. As a result of these discussions, she stated that changes to the Board’s database system which will allow better tracking of the accounts receivable were recently implemented. With these changes in place, she stated she will be meeting with the auditors again and anticipates a new methodology will be fully adopted in fiscal year 2009.

Chairman Rocco requested that all Board members review the final draft and send any comments or concerns to Executive Director Richmond within the next week. At that time, the report with minor editing will be finalized and forwarded to the State Auditor.

Mr. Hickey asked if there were any questions regarding the October and November financials, which were mailed to the Board members. Hearing no questions, Mr. Hickey began his report with the November income and expense line items. He stated that we are 42% of the way through the fiscal year and, as indicated in the percent of budget column on the Monthly Income Figures spreadsheet, most line items are right on target with the budget. Mr. Hickey stated that tank revenue is currently at 97% of budgeted revenue,

totaling approximately \$14.6 million. He stated that 115 delinquent accounts totaling \$1,020,000 recently were sent to the Attorney General's Office for collection and their collection rate is approximately 30%.

Mr. Hickey stated that the Star Ohio interest rate is currently at 4.5%. He noted that interest income was budgeted at 5.0%, but at the beginning of the fiscal year the interest rate was at 5.25%. He said that percentage rate has been slowly dropping, however, because of the higher than expected rates at the beginning of the year, interest income should be on target with the budget for the year. He added that the advertising line item is above budget and will increase as a result of the Chief Fiscal Officer advertisements.

Chairman Rocco called on Ms. Krista Nichols, Accounts Receivable Specialist, to present the assurability report. Ms. Nichols stated that of the 7,987 paid facilities with one or more assurable tanks, there are 6,674 facilities that have passed the BUSTR data initial compliance check for upgrade requirements, leak detection, and registration fees. She said that 244 facilities had initial problems but had provided more information and a Certificate of Coverage has been issued. She said there were 65 facilities in pending denial status, which gives the owner 30 days to bring the facility into compliance before the issuance of a determination denying the Certificate. To date, eight determinations have been issued for 2007. Ms. Nichols stated 7,019 facilities have been processed with a remainder of 968 to be processed.

### **Claims Report:**

Chairman Rocco called on Cindy Duann, Environmental Claims Supervisor, to present the claims report. Ms. Duann said the total maximum liability of in-house unpaid claims is \$26.9 million. This is the amount of claims adjusted for remaining deductibles that are in-house and pending review; no adjustment has been made for anticipated disallowed costs. She stated that claims had been submitted for 2,543 sites.

Ms. Duann said that 1,615 sites had a no further action (NFA) status and the average claims settlement payout per site is \$64,318. Ms. Duann noted that the average claim payout based on 100 sites that had received NFA status and had been cleaned up exclusively under BUSTR's 1999 and 2005 risk based corrective action rules is \$18,185 per site.

Ms. Duann stated that there are currently 34 claims under appeal, noting that number is higher than normal. She said that some of those claims which were appealed have had more information submitted and are being further reviewed to determine if a settlement addendum is justified.

Ms. Duann said that in the last six months, the Board received 448 claim packages, averaging 75 claims per month. She said that during that same time period, the staff settled 381 claims and closed 40 claims for an average of 70 claims per month.

Ms. Duann noted that the \$3.4 million settlement amount offered in the past six months is lower than the targeted amount of \$4.5 million for the first half of the program year. Ms. Duann stated that during the past four years, lump sum settlements were made to major oil companies settling 410 claims. She said that this year there had not been any lump sum settlements. She stated that productivity is actually up with individual claims reviewers reviewing/settling more claim packages but due to disallowed costs for things like late filing and no pre-approval, the amount of settlement dollars is down.

Ms. Duann said that during the first six months of this program year, the Board received 62 eligibility applications, and, in that same time period, determined a total of 61 eligibility applications. She said there were 39 approved eligibilities and 22 denied eligibilities.

Ms. Duann said that the Board received 75 cost pre-approval applications in the past six months and determined 117 pre-approval applications.

### **CFO Search Update**

Chairman Rocco called on Executive Director Richmond for an update regarding the search for the Chief Fiscal Officer (CFO). Ms. Richmond said that the search committee, comprised of Jim Rocco, John Hull, and Tom Stephenson, met with Dave Reeder and Ms. Richmond to discuss the position description and qualifications required to fill the CFO vacancy. She stated that the committee reviewed the current position description, a draft description prepared jointly by Ms. Richmond and Mr. Reeder, the qualifications, and also a draft job posting.

Ms. Richmond said that as a result of that meeting, some of the many miscellaneous duties required of the previous CFO had been evaluated and placed elsewhere within the staff. She stated that the primary change in the CFO position was transferring the responsibility of the day-to-day office management type functions and the processing of the certificates of coverage to the Assistant Director. She stated that some of the administrative duties (i.e., benefits, public records, and personnel) were transferred to the Administrative Assistant. Ms. Richmond said that the final result of the job description focuses on the financials and computer operations.

She stated that the job posting is now available on the State of Ohio's On-Line Employment Application Processing (OLEAP) website. She said the position description is also available on the Board's website. Ms. Richmond stated that the position will be advertised in The Columbus Dispatch and also on the Ohio Society of CPA's website, with an application deadline of February 1, 2008.

Ms. Richmond said that it is her intent to review and interview applicants during February and to present a recommendation for the CFO position to the Board members at the March 12<sup>th</sup> Board meeting.

### **New Business**

#### *Certificate of Coverage Ratification*

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

Ms. Richmond explained that behind Tab 7 there are two lists of owners. The first is a listing of owners who had been issued a program year 2006 Certificate of Coverage; and, behind the blue divider page, a listing of owners who had been denied a program year 2006 Certificate of Coverage. She said that behind Tab 8 there are also two lists of owners. The first is a listing of owners who had been issued a program year 2007 Certificate of Coverage; and, behind the blue divider page, a listing of owners who had been denied a program year 2007 Certificate of Coverage.

Ms. Richmond said that the process used to review the fee applications and issue or deny a Certificate of Coverage included a review for completeness to determine that full payment had been made, that financial responsibility was demonstrated, and that the BUSTR registration was complete. In a second level of review, BUSTR registration data is considered to determine whether tanks for which coverage is sought are in compliance with BUSTR rules. Ms. Richmond said if there are no issues, the facility receives a Certificate of Coverage.

Ms. Richmond explained that if compliance issues are discovered, notice is provided to owners in accordance with Board rules and the Revised Code. Throughout this process the Board's staff works with owners to correct the fee statement record and/or the BUSTR registration record. Ms. Richmond stated that the staff often continues to work with owners even after a determination to deny a Certificate of Coverage has been issued. The Board's rules and the Revised Code make provisions for an appeal of the determinations issued within this process.

Ms. Richmond asked that the Board ratify her actions with respect to the facilities receiving 2006 Certificates of Coverage.

Mr. Stephenson moved to ratify the list of 2006 Certificates of Coverage that were granted. Ms. Hilvert seconded. A vote was taken and all were in favor. The motion passed.

Ms. Richmond stated that all of the processes as stated in the Board's rules and the Revised Code were followed in making the determinations for denying Certificates of Coverage. Ms. Richmond asked that the Board ratify her actions with respect to the facilities that were denied a Certificate of Coverage in program year 2006.

Mayor Kuchta moved to ratify the list of 2006 Certificates of Coverage that were denied. Ms. Hilvert seconded. A vote was taken and all were in favor. The motion passed.

Ms. Richmond asked that the Board ratify her actions with respect to the facilities receiving 2007 Certificates of Coverage.

Mr. Stephenson moved to ratify the list of 2007 Certificates of Coverage that were granted. Mr. Epperson seconded. A vote was taken and all were in favor. The motion passed.

Ms. Richmond asked that the Board ratify her actions with respect to the facilities that were denied a Certificate of Coverage in program year 2007.

Mr. Stephenson moved to ratify the list of 2007 Certificates of Coverage that were denied. Mr. Epperson seconded. A vote was taken and all were in favor. The motion passed.

### **Confirm Next Meeting**

Mr. Stephenson made a motion to adjourn the meeting. Mr. Cable seconded. All were in favor. The next board meeting will be Wednesday, March 12, 2008 beginning at 10:00 a.m.