



# Petroleum Underground Storage Tank Release Compensation Board

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## MINUTES OF THE 142<sup>nd</sup> MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD June 13, 2012

### BOARD MEMBERS IN ATTENDANCE

Jim Rocco  
John Hull  
Brian Epperson  
Steve Hightower  
Don Kuchta  
Tom Stephenson

### EX-OFFICIO MEMBERS IN ATTENDANCE

Bill Hills, representing Director David Goodman, Ohio Department of Commerce  
Chris Geyer, representing Director Scott J. Nally, Ohio Environmental Protection Agency

### OTHERS IN ATTENDANCE

Starr Richmond	Executive Director, PUSTRCB
Don Leasor	Chief Fiscal Officer, PUSTRCB
Madelin Esquivel	Assistant Director, PUSTRCB
Cindy Duann	Environmental Claims Supervisor, PUSTRCB
Ellen Mitton	Administrative Coordinator, PUSTRCB
Britanya Poe	Office Assistant, PUSTRCB
Mary Jo McKenzie	Claims Coordinator, PUSTRCB
Krista Nichols	Accounts Receivable Specialist, PUSTRCB
Cheryl Hawkinson	Assistant Attorney General
Catherine Kent	Assistant Attorney General Intern
Verne Ord	Commerce/SFM/BUSTR
David Biemel	OPMCA
Will Latt	Speedway, LLC
Eric Swaisgood	Speedway, LLC
Doug Darrah	ATC Associates
Andy Shrock	BP
Jodi Handlin	BJAAM Environmental, Inc.
Christie Kuhlmann	Stantec

Minutes submitted by:

Ellen S. Mitton

### **Call To Order:**

Chairman Rocco convened the one hundred forty-second meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, June 13, 2012. The following members were in attendance: Jim Rocco; John Hull; Brian Epperson; Steve Hightower; Mayor Don Kuchta; Tom Stephenson; Bill Hills, representing Director David Goodman, Ohio Department of Commerce; and, Christopher Geyer, representing Director Scott J. Nally, Ohio Environmental Protection Agency.

Chairman Rocco asked if there were any comments, questions, or discussion regarding the minutes from the March 21, 2012, board meeting and there were none. Mayor Kuchta moved to approve the minutes. Mr. Epperson seconded. A vote was taken and seven members voted in the affirmative. Mr. Hull abstained. The motion carried.

### **BUSTR Report:**

Chairman Rocco called upon Bill Hills, Bureau Chief, to present the BUSTR report.

Mr. Hills said BUSTR continues to address the Domenici-Barton Energy Policy Act of 2005, which is known as the Energy Policy Act, and as a result of that policy, the new rule regarding underground storage tank operator training became effective on September 1, 2011.

Mr. Hills stated that over 700 people have attended a BUSTR owner/operator training seminar and to date there have been 17 approved Class A & B course instructors throughout the state. Mr. Hills stated an agreement has been made with the County Commissioners Association to provide trainers to go to Zanesville, Napoleon, Wilmington, and Ashland to facilitate training seminars to the county employees in those cities and surrounding areas at no cost to the employer or employees. He said the training requirement deadline is August 8, 2012. Mr. Hills said additional information regarding these events could be found at <http://com.ohio.gov/fire/ReleasePreventionInformation.aspx>.

Mr. Hills said the tentative effective date of several rules, including the UST closure and corrective action rules, is July 1, 2012. He stated that the Technical Guidance Manual is complete and soon would be available on the BUSTR website. Mr. Hills stated a rules seminar will be held on June 26, 2012.

Mr. Hills said BUSTR is finalizing activities under the American Recovery and Reinvestment Act of 2009 (ARRA) as the grant ended on May 14, 2012. He said 27 sites had received no further action letters (NFAs). Mr. Hills said the total grant was \$8.09 million and BUSTR anticipates spending \$7.6 million before the final reports are submitted to the U.S. EPA.

Mr. Hills said BUSTR continues to work on the OTTER database upgrade project, which is now in Phase III. He said the project currently is on target and went "live" on April 30<sup>th</sup>. Mr. Hills said a meeting would be held soon to identify and refine the Phase IV scope of work.

Mr. Hills said Phase I of the click-scheduling project began February 17, 2012. Mr. Hills explained the click-scheduling project is a computer program that geographically schedules the inspectors to visit facilities that are located in the same geographical area. Mr. Hills said the tablet specifications are being finalized and ordered; and, he expects it will be effective in July 2012.

He said the UST operation compliance inspection current grant cycle ends August 8, 2012. Mr. Hills said a total of 5,891 inspections had been conducted to date, which puts BUSTR 24% ahead of projections.

Mr. Hills said the corrective action current grant cycle ends September 30, 2012. He said for the week ending May 26, 2012, there were 11 NFAs issued. He said BUSTR projected a total of 425 NFAs during the current grant cycle, but to date the Bureau is 6% behind schedule with a total of 399 issued NFAs. Mr. Hills stated BUSTR would be on schedule by the end of grant cycle on September 30, 2012.

Mr. Hills said BUSTR was notified by U.S. EPA of a 10% cut in the LUST grant in both 2013 and 2014. He said this cut will have an impact on the workforce at BUSTR.

Mr. Hills stated currently there are 3,807 owners of 7,633 registered facilities and 22,248 registered USTs. He said there had been a total of 26,847 NFAs related to clean-ups issued by the BUSTR program since its inception.

### **Financial Report:**

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

#### ***February, March, and April Financials***

Mr. Leasor stated the February, March, and April financials were emailed to each member. He asked if there were any questions or concerns regarding these reports. Mr. Leasor said since the fiscal year 2012 annualized revenues and expenses would be discussed as part of the operating budget, he would not discuss the monthly financial reports.

#### ***Operating Budget***

Mr. Leasor said 2012 tank revenue is just over \$14.4 million, approximately \$188,000 more than the \$14.25 million budgeted. Mr. Leasor said the recommended budget for fiscal year 2013 is \$14.1 million, based on an estimated 20,850 USTs and the assumption that 25% of the tanks will be assured at the reduced deductible. Mr. Leasor said per tank fees will remain the same in fiscal year 2013 at \$600 for the standard deductible and \$800 for the reduced deductible.

Mr. Leasor said property transfer fees are projected at \$97,000 for fiscal year 2013. He said a portion of the projected transfer fees were assessed during the current year, but are anticipated to be paid in fiscal year 2013. He stated the prior years' fees to be collected in fiscal year 2013 less the amount anticipated to be refunded are projected to be \$450,000.

Mr. Leasor said that interest income for 2012 was budgeted at \$12,000 and the actual interest earnings is approximately \$8,700. He said this resulted in an unfavorable variance of approximately \$3,300. He said the negative variance is because the StarOhio rate of return only reached .08% during the 2012 fiscal year, but the budget was based on a .10% rate of return. Mr. Leasor stated the fiscal year 2013 anticipated interest income of \$9,500 is based on an estimated rate of .06%.

Mr. Leasor said that miscellaneous income is projected to remain at \$1,000 for fiscal year 2013.

Mr. Leasor stated \$18,000 was budgeted as both a revenue and an expense item for seminars in fiscal year 2012. He said, however, there were no seminars held during this fiscal year. Mr. Leasor said \$10,000 is recommended for fiscal year 2013 in the event there is an opportunity to host a seminar.

Mr. Leasor explained the actual total income of approximately \$14.4 million for fiscal year 2012 is 1.17% above the budgeted \$14,277,000, noting a positive variance of \$166,405.

Mr. Leasor said the claims expense budgeted in fiscal year 2012 was \$9 million, however, actual claims expenses are anticipated to be \$7.1 million, which is a 21% variance. He said an additional \$355,000 was received as part of a subrogation claim, which will offset the claims paid out this year. He stated the proposed fiscal year 2013 claims expense budget is being held at \$9 million.

Mr. Leasor said that the salary line item actual expense for fiscal year 2012 was \$1,191,111 and exceeded the budgeted amount of \$1,174,700 by \$16,411. He recommended the fiscal year 2013 budget for salaries be set at \$1,214,000. Mr. Leasor said the fiscal year 2013 budgeted amount reflects all positions being filled, anticipated leave payout, and fringe benefit costs.

Mr. Leasor noted the advertising, staff development, training, travel, and postage line items are self-explanatory and had been carried over with no changes in the recommended budget amounts.

Mr. Leasor said the temporary services line item budget in 2012 was \$15,000 and actual expenditures were \$15,640. He said the unfavorable variance of \$640 was due to the utilization of a temporary employee for a special project and the subsequent use of the same temporary employee to fill an unanticipated staff vacancy. Mr. Leasor said the requested amount for fiscal year 2013 is \$15,000.

Mr. Leasor stated the rent line item budgeted amount was \$110,000 with an actual expenditure of \$108,808 for the fiscal year. Mr. Leasor said the rent expense for fiscal year 2013 is expected to be \$108,500.

Mr. Leasor noted that the office supplies line item was budgeted at \$13,000 and actual expenditures were \$10,114. He said the amount recommended for office supplies for fiscal year 2013 is being held at \$13,000. He said this amount includes purchases of computer equipment and furniture with a value of less than \$500.

Mr. Leasor noted that printing and copying was budgeted at \$16,500 and actual expenses were \$11,018 resulting in a favorable variance of \$5,482. He recommended the fiscal year 2013 budget be held at \$16,500.

Mr. Leasor said the fiscal year 2012 budgeted amount for legal and professional expenditures was \$275,000 and actual expenditures were \$255,131 resulting in a favorable variance of \$19,869. He said the fiscal year 2013 legal and professional expense line item recommended budget is \$275,000 and includes expenses for the Assistant Attorney General and Hearing Officer's services, the audit, legal experts, miscellaneous maintenance costs related to the computer network and STARRS' database, Attorney General and Special Counsel collection costs, and other miscellaneous professional services.

Mr. Leasor said employee expenses were \$3,360 below the amount budgeted. He said the anticipated expenses for fiscal year 2013 are \$18,600, which includes employee parking.

Mr. Leasor said the telephone line item was budgeted in fiscal year 2012 at \$11,100. He said the actual expenditure was \$10,395 resulting in a positive variance of \$705. He said the fiscal year 2013 proposed budget of \$11,100 includes web access, web site hosting, spam filtering, main telephone lines, 1-800 phone number, and hosting the off-site back-up of electronic files.

Mr. Leasor said the fiscal year 2012 depreciation expenses were below the amount budgeted by \$4,679. He said the anticipated depreciation expense for fiscal year 2013 is \$27,000.

Mr. Leasor stated unemployment compensation was \$7,648 below the amount budgeted for fiscal year 2012. He said the individual drawing unemployment is now employed and there is no unemployment compensation budgeted for fiscal year 2013.

Mr. Leasor stated that overall expenses for fiscal year 2012 were approximately 3.1% below what was budgeted.

In response to Mr. Hightower's question regarding the use of StarOhio for the Board's investments, Chairman Rocco stated there have been discussions with the Treasurer's Office regarding other investment opportunities. Mr. Rocco said that after paying off the bonds, the Board is gradually building a cash reserve and a portion could be invested over a longer term at an increased rate of return. He explained that the Board must have money available for paying claims and annual operating expenses, which limits the choice of investment opportunities. Chairman Rocco stated as the cash reserve grows, the Board's first obligation should be reducing Fund fees and/or increasing the number of claim settlement determinations being issued each year in order to address the claims backlog.

Chairman Rocco said that during the months following the bond pay-off, the amount of cash available was limited. He expects in another year or so there should be an increase in the cash reserve and perhaps at that time, the Board would be able to invest a portion of that cash reserve into a long-term, higher return investment.

### ***Capital Budget***

Chairman Rocco called upon Mr. Leasor to present the proposed Capital Budget for fiscal year 2013. Mr. Leasor said the furniture & equipment line item for fiscal year 2012 was budgeted at \$3,000 and there were no expenditures. He said the recommended amount for fiscal year 2013 for the furniture and equipment line item is \$3,000.

Mr. Leasor said the Data Processing & Electronics budget for computer replacements and other general IT purchases had been set at \$12,000 in fiscal year 2012. He said actual expenses were \$11,131 for the purchase of new PCs and monitors. He said the recommended 2013 operating budget is \$12,000 to purchase prepackaged software and replacement IT equipment as needed.

Mr. Leasor said for the 2013 fiscal year \$5,000 is being recommended for the rollover of data stored in the legacy database (RBase) to a Microsoft Access database. He said there is still access to RBase for research purposes; however, there are compatibility issues with the Windows 7 operating system, and RBase limits the number of users that can access the data at one time. Mr. Leasor stated the data needs to be available for historical purposes and moving the data to an Access database would resolve the issues with the legacy system.

Mr. Leasor stated the fiscal year 2012 budget for database out-of-scope and "wouldn't it be nice if" items was \$30,000. He stated actual expenditures were \$3,561 for software development for tracking Ability to Pay applications. Mr. Leasor said the database out-of-scope and "wouldn't it be nice" line item recommended for fiscal year 2013 is \$25,000, which is a carryover item from fiscal year 2012. He said this amount is requested for the development of multiple new modules and enhancement of existing modules that will permit tracking fee-related litigation activities including joint enforcement actions with BUSTR, tracking subrogation cases, and responding to changes in the BUSTR database.

Chairman Rocco explained there had not been much progress on the database out-of-scope and "wouldn't it be nice" projects because the Board had worked with two different software consultants within the last fiscal year. He said both consultants began working with the Board and both

subsequently left the Board for full-time employment elsewhere prior to completion of these items. He added this issue would be discussed later in the meeting.

Mr. Leasor said the fiscal year 2012 total Capital Budget was set at \$45,000 and actual expenditures were approximately \$14,700. Mr. Leasor recommended a total fiscal year 2013 Capital Budget of \$45,000.

Following Mr. Leasor's presentation, a discussion of whether or not there is a portion of the in-house claims process that could be automated to enable a speedier review of claims. Mr. Hull suggested the Board increase the legal and professional line item in the operating budget to hire a consultant to work with the claims staff and to evaluate the claims review process. He said if it were determined that a portion of the process could be automated; the Board could revisit the capital budget and include any expenses required to develop and implement that software.

Chairman Rocco recommended increasing the legal and professional line item in the operating budget an additional \$25,000 to hire a consultant to evaluate the current claims review process. He stated this would bring the legal and professional line item to \$300,000 and the recommended operating budget total expense to \$1,772,700.

Mr. Hull moved to approve the 2012 Operating Budget as amended. Mr. Stephenson seconded. A vote was taken and all members voted in favor. The motion passed.

Mr. Hull moved to approve the amount of \$45,000 recommended for the fiscal year 2013 Capital Budget. Mr. Stephenson seconded the motion. A vote was taken and all of the members were in favor. The motion passed.

Chairman Rocco said a motion was needed to obligate monies for claims expense as proposed. Mr. Hull moved to obligate \$9 million as recommended for fiscal year 2013. Mr. Hightower seconded. A vote was taken and all of the members were in favor. The motion passed.

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

Mr. Leasor stated for the program year 2012 fee statements issued on April 26, 2012, approximately \$14.2 million was invoiced to 3,545 owners of 21,753 USTs.

Mr. Leasor said as of June 12, 2012, per tank fees collected were approximately \$4.6 million, which is 33% of the billed amount. He said prior year collections for the same period were \$5.1 million, which reflects a 9.5% decrease from the prior year.

Mr. Leasor said between July 1, 2011 and June 12, 2012, approximately \$14 million has been collected for program year 2011 Fund fees and \$692,000 has been collected for prior year fees net of any refunds paid.

Mr. Leasor said for program year 2012, approximately 16,100 tanks were billed at the standard deductible (\$55,000) and about 5,650 tanks were billed at the reduced deductible (\$11,000). Mr. Leasor said as of June 12, 2012, there have been 4,900 tanks paid at the standard deductible and 2,183 tanks paid at the reduced deductible for a total of 7,083 tanks paid by 1,375 owners. He said this compares to 7,759 tanks paid by 1,265 owners for the same prior year period, which reflects an 8.7% decrease in tanks paid.

Mr. Leasor said for the 2011 program year, 3,370 owners have paid for 21,000 tanks. He indicated this amount would increase by June 30, 2012.

### ***Compliance/Fee Assessment Report***

Chairman Rocco called on Ms. Madelin Esquivel to present the compliance and fee assessment report.

Ms. Esquivel said an additional \$45,819 in fees had been refunded since the March Board meeting, bringing the total to \$231,109 or 92% of the \$250,000 fee refund goal.

Ms. Esquivel said as of May 31, 2012, 465 fee refunds had been paid to 215 owners. She said by the end of June, the total fee refunds should be between \$350,000 and \$370,000. Ms. Esquivel said currently there is a \$120,000 refund pending, which will put us over the goal.

Per Chairman Rocco's request, Ms. Esquivel explained that examples of reasons for a refund are if a tank owner paid for an exempt tank; an owner paid late fees that were not due; or, if an owner paid the reduced deductible and the Certificate of Coverage was denied, a refund of the difference between the reduced deductible and the standard deductible per-tank fee is given. She said a pending refund is not guaranteed to be paid until the owner file is completely reconciled by a staff member and the Executive Director approves the refund for payment.

Ms. Esquivel explained that if an owner has outstanding fees and a refund has been identified, the refund is first used to offset the outstanding fees for that account and any remaining amount is paid to the owner. She said the amount of refunds applied to offset outstanding fees since the March meeting was \$9,567, bringing the total amount of refunds used to offset outstanding Fund fees to \$66,017 for the 2011 program year.

Ms. Esquivel said there had been \$418,718 collected by the Attorney General's Office and Special Counsel. She said this amount includes the Attorney General's and Special Counsel's collection costs paid by the tank owners, including those that pay us directly and include the collection costs with the payment. She said the Attorney General's office then invoices the Board for those collection costs.

Mr. Hull asked if she knew the net value of the amount collected. Ms. Esquivel said the net amount was not readily available at this meeting but could be obtained. Chairman Rocco requested Ms. Esquivel to include the net value in future reports to show the funds received by the Board for the payment of fees.

Ms. Esquivel said for program year 2011, owners representing 687 accounts totaling \$1,687,168 had been certified to the Attorney General's Office for collection. She said there will not be another certification to the Attorney General's office until program year 2012. She said that certification should be before the end of September.

Ms. Esquivel said there are eight Orders Pursuant to Law currently in appeal status; five of these appeals are under review and three are pending settlement agreements. She said there are also two determinations to deny a Certificate of Coverage currently under appeal.

Ms. Esquivel said there had been no new requests for Ability to Pay Applications since the Board meeting in March. She said a total of five Ability to Pay Applications had been submitted since the inception of the program in November 2011.

Ms. Esquivel said 3,595 fee statements had been mailed for program year 2011. She said as of May 31, 2012, there had been 3,213 owners issued Certificates of Coverage. Ms. Esquivel said currently there are 49 owners with certificates being processed; 21 owners with unresolved pending denials; and, 134 owners with unresolved determinations denying a certificate.

Ms. Esquivel said there are 86 owners on the unclaimed monies list, which totals \$108,420. She said the unclaimed monies list is updated monthly and is available on the Board's website at [www.petroboard.org](http://www.petroboard.org).

During a discussion regarding "unclaimed funds" and "unclaimed monies," Ms. Richmond stated "unclaimed funds" is a generic term the Board has been using and was not to be confused with the State of Ohio's Unclaimed Funds Program. She stated by statute unclaimed monies are those actual monies determined to be payable to an owner. She said examples would be the Board issued a check and it was never cashed; or, a check was returned to the Board due to an incorrect address. Ms. Richmond stated that amount is a very small portion of this list. She asked Ms. Hawkinson to discuss the unclaimed money.

Ms. Cheryl Hawkinson, Assistant Attorney General, stated that the State of Ohio's Unclaimed Funds Program is a holding place for refunds of actual money owed to consumers of the state of Ohio; for example, a refund due to a customer from a utility company. She said one of the exceptions to this Unclaimed Funds Program is section 9.39 of the Revised Code, which states if an agency collects money as a normal part of doing business as a state agency, then a trust account must be established for holding monies unclaimed by the rightful owner.

Ms. Hawkinson stated the Board must establish an "unclaimed monies trust account" to hold monies set aside as refunds that have not been claimed by the rightful owner. She said these funds are to be held in the trust account for five years; and, if not claimed, may then go back into the Board's unobligated account.

She said the money currently listed on the unclaimed monies list included money earmarked as refunds because the Board's staff suspects there could be a refund due to a tank owner. Ms. Hawkinson said those unconfirmed refunds would not be placed in an "unclaimed monies trust account" but would remain in the Board's unobligated account.

### **Claims Report:**

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

Ms. Duann reported that 121 sites had been closed in the claims database within the last year because NFAs had been issued. She said as of this date, a total of 2,035 sites that submitted claims for reimbursement had been issued NFAs with an average cleanup cost of \$126,600 per site. Ms. Duann said currently there are 1,717 open claims to be reviewed.

Ms. Duann said as of June 1, 2012, only 18 claims are under appeal, which is the lowest number of open appeals reported in several years.

Ms. Duann said the claims staff had a very productive year processing claim settlements. She said that in six out of the past eleven months the staff had reached their goal of settling 65 or more claims per month. Ms. Duann stated the total settlement offer to date is approximately \$6.5 million and she expected the total settlement offer for program year 2012 to reach \$7 million. Ms. Duann said in comparison to the last two program years, the claim payout percentage slightly increased to 71.6% this program year.



Ms. Duann said the Board had received five eligibility applications per month on average thus far in this program year. She said 41 eligibility applications had been approved this program year. She said the staff averages approximately five determinations per month.

Ms. Duann said that during the past eleven months 194 requests for cost pre-approval were received and 193 cost pre-approval notifications were issued. She stated 31 new requests for RAP cost pre-approval were received this year, which is higher than normal and these are typically more time-consuming to review.

### **New Business**

#### ***Hearing Officer Contract***

Ms. Richmond said the contract for Howard Silver, the Board's hearing officer, would expire on June 30, 2012. She said she talked with Mr. Silver and he agreed to extend his contract at the same pay rate and terms as previously contracted. She said this contract would be from July 1, 2012 through June 30, 2013. Mr. Hull made a motion to authorize the Chairman to enter into a contract with Howard Silver to extend his contract to June 30, 2013. Mr. Epperson seconded. A vote was taken and all of the members were in favor. The motion passed.

#### ***Assistant Attorney General Memorandum of Understanding***

Ms. Richmond said the Memorandum of Understanding (MOU) between the Board and the Attorney General regarding the legal services provided to the Board by Ms. Cheryl Hawkinson would expire on June 30, 2012. Ms. Richmond requested that the Board authorize the Chairman to enter into a Memorandum of Understanding with the Attorney General for the continuation of legal services provided by Ms. Hawkinson for the period of July 1, 2012 to June 30, 2013 in an amount not to exceed \$52,300. Mayor Kuchta so moved. Mr. Hightower seconded.

Ms. Richmond asked Chairman Rocco to amend the motion because the amount mentioned in the original motion is incorrect. She said the motion should read “. . . in an amount not to exceed \$52,952.” Mayor Kuchta so moved the amended motion. Mr. Hightower seconded. A vote was taken and all of the members were in favor. The motion passed.

#### ***Database Maintenance***

Ms. Richmond said the first IT consultant, Mark Suttner, was with the Board for approximately ten years and he designed and developed the current Statistical Tank and Reimbursement Records System (STARRS). She said following the original contract with Mr. Suttner, he went to a maintenance contract until his resignation. She said the contract for the remainder of the year was then awarded to TPA Solutions. Ms. Richmond stated Mr. Don Young, TPA Solutions, has accepted full time employment elsewhere and the Board is once again searching for a database consultant to assist the Board with the out-of-scope and “wouldn't it be nice” items that have been budgeted.

Ms. Richmond stated she is currently researching this matter and is close to making a decision. She said since the Board would not meet again until September, she is requesting the Board to authorize the Chairman to negotiate and enter into a contract with an IT consultant beginning in July 2012 through June 30, 2013, for database maintenance and consulting services in an amount not to exceed \$24,000. Mr. Hull so moved. Mr. Hills seconded and a vote was taken. All members voted in the affirmative. The motion carried.

#### ***Hardship Applications***

Chairman Rocco called upon Ms. Richmond to present the hardship applications. Ms. Richmond stated when hardship status is granted to an owner, review of the owner's claims expedited, thereby reducing

the owner's financial burden. She said a hardship status is granted for one year and can be renewed annually by submitting another application accompanied with updated financial information.

***Claim #20240-0001/05/28/08, dba Amanda Carryout Inc., Owner-Allen C. Frank***

Ms. Richmond said Mr. Allen Frank, owner of Amanda Carryout Inc., requests the Board grant hardship status to the carryout for the reimbursement of claims related to a 2008 petroleum release on East Main Street in Amanda, Ohio. She said this is the carryout's third request for hardship status. The first hardship status expired on June 9, 2010; and, the second hardship status expired on March 8, 2012. Ms. Richmond said to date the Fund had reimbursed Amanda Carryout Inc. slightly over \$59,500. She said there is one claim in-house pending review for approximately \$13,600 and an active request for cost pre-approval for an estimated \$42,000.

Ms. Richmond said that in addition to the review of the hardship application, a U.S. Environmental Protection Agency (EPA) financial capacity test was used to evaluate the cash flow of Amanda Carryout Inc. and to determine whether it has the ability to carry debt, in which case it could finance the costs of corrective actions over time. She said based on the information Mr. Frank provided in the application, the ABEL model estimates a less than 50% probability that the carryout can afford \$50,000 in corrective action costs.

Ms. Richmond recommended that the Board approve this application and grant hardship status to Amanda Carryout Inc. Mr. Hull so moved and Mr. Epperson seconded. A vote was taken and all members voted in the affirmative. The motion carried.

***Claim #18752-0001/06/11/08, dba Chuck's Citgo, Owner-Charles V. Hanrahan***

Ms. Richmond said Mr. Hanrahan is the responsible person for a 2008 release that occurred at 3718 Lawrenceville Drive in Springfield, Ohio. She said this is the third request for hardship status submitted by Mr. Hanrahan and that to date the Fund has reimbursed Mr. Hanrahan about \$169,000. Ms. Richmond stated that although there are currently no outstanding claims associated with this release, there is a pending request for the pre-approval of \$289,000 for the purchase, installation, and operation and maintenance of a system.

Ms. Richmond said based on the information provided by Mr. Hanrahan in the application, his household gross income slightly exceeds his reported annual household living expenses and debt payments. She said Mr. Hanrahan currently receives no income from the facility.

Ms. Richmond said in addition to the review of the hardship application, a US Environmental Protection Agency (EPA) financial capacity test was used to evaluate Mr. Hanrahan's cash flow and to determine whether he had the ability to carry debt, in which case he could finance the costs of corrective actions over a period of time. She said based on the information provided in the application and the financial capacity test, Mr. Hanrahan does not have adequate cash flow or the ability to carry additional debt to pay corrective action costs.

Ms. Richmond recommended that the Board approve this application and grant hardship status to Mr. Hanrahan. Mayor Kuchta so moved and Mr. Geyer seconded. A vote was taken and all members voted in the affirmative. The motion carried.

***Claim #8587-0001/06/28/98-A, dba Mangol's Service Station, Estate of Edmund Ratajczak, Jacqueline McCown, Executrix***

Ms. Richmond said Mrs. Jacqueline McCown is the executrix for the estate of Edmund Ratajczak. The estate is the responsible party for a 1992 release that occurred at 6881 Brecksville Road in Independence, Ohio. She said this is the fourth request for hardship status. Ms. Richmond said that to

date, the Fund has reimbursed approximately \$277,000 for this release. She said there is currently one claim pending review with a face value of \$6,000 and a request for cost pre-approval in an amount of \$63,000.

Ms. Richmond stated that the estate has no assets and it has been kept open only to deal with the remediation of this release. She said based on the EPA financial capacity test, the estate does not have adequate cash flow or the ability to carry additional debt in order to pay corrective action cost.

Ms. Richmond recommended that the Board approve this application and grant hardship status to the estate of Mr. Ratajczak. Mr. Hull so moved and Mr. Hightower seconded. A vote was taken and all members voted in the affirmative. The motion carried.

***Claims #1755-0007/05/17/07, dba Easy Trip #211 and #1755-0004/05/11/94, dba Easy Trip #106, Owner-Central Ohio Energy, Inc.***

Ms. Richmond said Central Oil Energy Inc. is the responsible person for a 1993 release that occurred at 101 East Main Street in Crestline, Ohio; and, a 2006 release that occurred at 150 Sandusky Street in Monroeville, Ohio. She said this is the first request for hardship status. Ms. Richmond said for the Crestline release, Central Ohio Energy has been reimbursed \$35,000 and two claim packages totaling \$22,000 are pending review. She said for the Monroeville release, there is currently one claim, which is under appeal, with a face value of \$31,000. She said the total costs anticipated to be spent in the next twelve months for both releases is \$57,000.

Ms. Richmond stated Central Ohio Energy Inc. sold all its UST sites in 2007. She said the corporation currently has no income, very minimal liquid assets, and is in the process of trying to sell the remaining fixed assets, including two pieces of real estate. She said following the sale of the UST sites in 2007, the shareholder of the corporation withdrew a substantial sum of money from the corporation, resulting in an insufficient amount of money being available within the corporation to pay for anticipated corrective action costs. She said based on this and other information provided within the application, she is recommending that the Board deny Central Ohio Energy's request for hardship status.

Mr. Hightower so moved and Mr. Hull seconded. A vote was taken and all members voted in the affirmative. The motion carried.

***Rules Review***

Chairman Rocco called upon Ms. Richmond to present 13 proposed rule changes and a new rule regarding the access and maintenance of confidential personal information. Ms. Richmond said the Rules Committee had reviewed and approved the proposed changes to the following rules: 3737-1-02, 3737-1-03, 3737-1-04, 3737-1-07, 3737-1-09, 3737-1-09.1, 3737-1-12, 3737-1-12.1, 3737-1-16; 3737-18, 3737-1-19, 3737-1-21, 3737-1-22; and (new) 3737-1-23.

Chairman Rocco said most of the proposed changes are editorial or changes to address issues as they relate to changes in BUSTR's rules. He requested Ms. Richmond to briefly go through the list and discuss those rules with significant changes, and to answer any questions if needed.

Prior to Ms. Richmond's presentation, Mayor Kuchta noted the proposed rules package as presented had been emailed to each member and there had been an in-depth discussion at a rules committee meeting. He said rather than go through each rule one by one, he suggested the Board accept the proposed rule package unless there were questions.

Mr. Hightower requested a brief explanation of the new rule, 3737-1-23, "Access and Maintenance of Confidential Personal Information." Chairman Rocco stated that this new rule had been required in some form by every agency within state government. He said this specific rule does more than just limit the information that is confidential; it also requires tracking who accesses the information and places control on who can actually access the information. Chairman Rocco said most of the language came directly from the rule as written by the Department of Administrative Services.

Mr. Hightower moved to accept the recommendation of the Rules Committee to file the following rules as proposed: 3737-1-02, 3737-1-03, 3737-1-04, 3737-1-07, 3737-1-09, 3737-1-09.1, 3737-1-12, 3737-1-12.1, 3737-1-16; 3737-18, 3737-1-19, 3737-1-21, 3737-1-22; and (new) 3737-1-23. Mr. Epperson seconded. A vote was taken and all of the members voted in the affirmative.

Ms. Richmond stated the proposed rules as approved would be filed with the Joint Committee on Agency Rule Review (JCARR) and notices would be sent advising of the rules changes and inviting public comment. She said a public hearing would be held prior to the Board meeting on September 19, 2012, and a hearing by JCARR would be held at a later date. Ms. Richmond said the anticipated effective date for the proposed rules is January 1, 2013.

### **Old Business**

#### ***Subrogation Claims Update***

Chairman Rocco called upon Ms. Hawkinson for a brief update on the status of the subrogation claims currently ongoing.

Ms. Hawkinson said approximately three years ago the Board voted to hire a special counsel to look into the double dipping of major oil companies. She said the investigation continues, meetings had been held, and documents exchanged. She said this investigation would continue to go forward at least through the fall of 2012.

Ms. Hawkinson stated the Speedway and Reliable Oil Equipment, Inc., settlement and release agreement had been signed and as previously reported, the Board received the agreed upon amount of \$355,000. She said corrective action continues at this Speedway site located in Springboro, Ohio.

Ms. Hawkinson said there is another subrogation issue that involves a Speedway release that M&M Service, Inc. in Eaton, Ohio contributed to or caused. Ms. Hawkinson said discussions had begun and she expected the clean-up of this release to be less costly than the release in Springboro.

#### ***Certificates of Coverage Ratification***

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

Ms. Richmond said that behind Tabs 11 and 12 are listings of facilities that, since the March Board meeting, had been issued or denied a program year 2010 or 2011 Certificate of Coverage.

Ms. Richmond said that 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 has been 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 had 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 with 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. Throughout this process the Board's staff works with the owner to correct the fee statement record and/or refers the owner to BUSTR to correct the registration record.

Ms. Richmond asked the Board to ratify her actions with respect to the issuance of the 2010 Certificates of Coverage for the five owners of 102 facilities on the list behind Tab 11.

Mr. Hull moved to ratify the list of 2010 Certificates of Coverage that were granted. Mr. Hills seconded. A vote was taken and all of the members were in favor. The motion passed.

Ms. Richmond asked the Board to ratify her actions with respect to the denial of the 2010 program year Certificates of Coverage for the three owners of the seven facilities included on the list behind the Tab 11 blue divider page.

Mr. Hull moved to ratify the list of 2010 Certificates of Coverage that were denied. Mr. Hills seconded. A vote was taken and all of the members were in favor. The motion passed.

Ms. Richmond asked the Board to ratify her actions with respect to the issuance of the 2011 program year Certificates of Coverage for the 78 owners of 205 facilities included on the first list behind Tab 12.

Mr. Geyer moved to ratify the list of 2011 Certificates of Coverage that were granted. Mr. Epperson seconded. A vote was taken and all of the members were in favor. The motion passed.

Ms. Richmond asked the Board to ratify her actions with respect to the denial of the 2011 program year Certificates of Coverage for the 58 owners of the 71 facilities included on the list behind the Tab 12 blue divider page.

Mr. Hull moved to ratify the list of 2011 Certificates of Coverage that were denied. Mr. Hills seconded. A vote was taken and all of the members were in favor. The motion passed.

### ***Executive Session***

Chairman Rocco requested a motion to go into executive session pursuant to O.R.C. 121.22(G)(3) to discuss matters of pending or imminent court action. Mayor Kuchta so moved. Mr. Hightower seconded and a roll call vote followed. The following members voted in the affirmative: Messrs. Hull, Hightower, Kuchta, Stephenson, Hills, and Geyer. Chairman Rocco and Mr. Epperson abstained. There were no nays and the motion passed.

Prior to moving into executive session, Chairman Rocco and Mr. Epperson recused themselves from this portion of the meeting. Chairman Rocco turned the meeting over to Mr. Hull, Vice Chairman.

### ***Reconvene Meeting***

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

***Confirm Next Meeting***

Mayor Kuchta made a motion to adjourn the meeting and Mr. Hightower seconded. All were in favor. The next board meeting will be Wednesday, September 19, 2012, beginning immediately following the Public Hearing, which is scheduled to begin at 10:00 a.m.