



# Petroleum Underground Storage Tank Release Compensation Board

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## MINUTES OF THE 169th MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD June 23, 2017

### BOARD MEMBERS IN ATTENDANCE

Jim Rocco  
Don Bryant  
Scott Fleming  
Tom Stephenson

### EX-OFFICIO MEMBERS IN ATTENDANCE

Bill Hills, representing Director Jacqueline Williams, Ohio Department of Commerce  
Chris Geyer, representing Director Craig Butler, Ohio Environmental Protection Agency  
J.D. Pisula, 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
Jonathan Maneval	Administrative Coordinator, PUSTRCB
Dave Gram	Environmental Claims Analyst, PUSTRCB
Lora Kruse	Administrative Assistant, PUSTRCB
John Hickey	Fiscal Specialist, PUSTRCB
Jennifer Croskey	Assistant Attorney General
Jeff Hussey	Interim State Fire Marshal
Brian FitzPatrick	Synergy Environmental, Inc.
Bob Brecker	Lehigh Gas - Ohio LLC
Doug Darrah	ATC Group Services LLC
Justin Wilde	BJAAM Environmental, Inc.
Sean Hetrick	BJAAM Environmental, Inc.

Minutes submitted by:

  
Jonathan Maneval  
Administrative Coordinator

**Call to Order:**

Chairman Rocco convened the one hundred sixty-ninth meeting of the Petroleum Underground Storage Tank Release Compensation Board on Friday, June 23, 2017.

The following members were in attendance: Jim Rocco; Don Bryant; Scott Fleming; Tom Stephenson; Bill Hills, representing Director Jacqueline Williams, Ohio Department of Commerce; Chris Geyer, representing Director Craig Butler, Ohio Environmental Protection Agency; and J.D. Pisula, representing Josh Mandel, State Treasurer of Ohio.

The following members were not in attendance: Mayor Ron Falconi and John Hull.

Chairman Rocco welcomed Jeff Hussey, who was recently appointed to serve as the Interim State Fire Marshal. Mr. Hussey briefly introduced himself and noted that the Ohio Fire Code is being updated to incorporate provisions of the 2015 International Fire Code. He said the proposed draft of the code was recently released and is available on the Fire Marshal's website. He encouraged any comments concerning the draft code to be submitted for consideration.

**Minutes:**

Chairman Rocco asked if there were any comments or questions regarding the minutes from the March 15, 2017 Board meeting and there were none. Mr. Geyer moved to approve the minutes. Mr. Hills seconded. A vote was taken and all members voted in the affirmative. The minutes were approved as presented.

**Suspended Claim Review:**

Chairman Rocco introduced Brian FitzPatrick, an employee of Synergy Environmental, and explained that Mr. FitzPatrick had asked to speak to the Board concerning its decision to suspend the review and settlement of claim reimbursement applications. Chairman Rocco briefly reminded members that any discussion of the matter would need to be held in executive session, and noted the topic would be included in the executive session portion of the Board's September meeting. He then called upon Mr. FitzPatrick to address the Board.

Mr. FitzPatrick introduced Bob Brecker, an employee with Dunne Manning Inc. (Dunne Manning), and thanked the Chairman for allowing them to speak before the Board to convey their concerns of the financial impact the suspension of claim reimbursement is having on their businesses. Mr. FitzPatrick explained that in 2009 Dunne Manning, formerly Lehigh Gas – Ohio, LLC, acquired a number of properties from BP, and as part of the sale contract, Dunne Manning assumed responsibility for the cleanup of certain properties that had been contaminated by petroleum release incidents. He explained that Synergy Environmental, as Dunne Manning's consultant, has been performing the corrective action work required by BUSTR, and obtained pre-approval from the Board for the corrective action costs prior to performing the work. He said currently, there is about \$300,000 of claimed costs that have not been reimbursed, and after speaking with the Board's Executive Director, Starr Richmond, they learned that these claims are not being processed as a result of litigation involving the Board and BP. He stated that he was not familiar with that litigation, and wanted to assure the Board members that Synergy Environmental, Dunne Manning, and its predecessor Lehigh Gas – Ohio are not BP or

affiliated with BP in any way. He said they are curious to know when the claims will be processed, especially given consideration that the costs for the work had already been preapproved.

Chairman Rocco said the Board has considered the issues surrounding its decision, and understands the implications of withholding the payment of the claims. He said although the claims are not currently being processed, they will be addressed at some point in time pending the outcome of the litigation.

Mr. Brecker offered to provide sale documentation showing the responsibility for performing the corrective action work was contractually transferred from BP to Dunne Manning. Executive Director Starr Richmond said having that information would be helpful. Mr. Hills requested copies of the documents to be provided to him, and asked for it to also be given to the Assistant Attorney General and Special Counsel.

Mr. Brecker reiterated that his company was not made aware of the BP litigation, and emphasized from a businessman's standpoint, they need the money to be reimbursed. Mr. Geyer noted that based on the email correspondence provided to the members, it appeared that some of the claims were four years old. Mr. FitzPatrick confirmed that some claim applications had been submitted about four years ago, and noted that any invoices and documentation should be in the Board's possession. Mr. Geyer asked how many Dunne Manning sites were affected, and Mr. FitzPatrick explained that claims for seven or eight locations had not been reimbursed.

Mr. Geyer stated that he appreciated Mr. FitzPatrick and Mr. Brecker taking the time to appear before the Board, and said he believed it was important for the Board to see and hear from individuals that have been affected by the decision to suspend the processing of claims. Chairman Rocco also thanked them for presenting their concerns, and asked the Board's Assistant Attorney General, Jennifer Croskey, to review the contractual information provided. He reiterated that the issue would be revisited at the Board's September meeting.

**BUSTR Report:**

Chairman Rocco called upon Bill Hills, Bureau Chief, to present the Bureau of Underground Storage Tank Regulations (BUSTR) report. Mr. Hills noted that the report was dated June 14, 2017, and he would provide more current information.

Mr. Hills said the vendors had fully completed the third responsible party search program. The program was used to identify underground storage tank (UST) owners and operators responsible for the investigation and cleanup of petroleum releases at 184 locations.

Mr. Hills reported that 28 grants totaling over \$3.8 million had been awarded through the Abandoned Gas Station Cleanup Grant Program. The program is administered by the Ohio Development Services Agency, in partnership with the Ohio EPA and BUSTR, and has \$20 million available to local government entities to be used for the cleanup of abandoned gas station sites.

Mr. Hills said the administrative rule amendment package was filed with JCARR (Joint Committee on Agency Rule Review) on May 17, 2017. He noted that a public hearing was held at the Fire Marshal's Office on June 20, 2017, but no testimony or comments were made. He said the rule package is

scheduled to be on JCARR's July 17, 2017 meeting agenda. He added that he expects the rule package to be final filed at the end of July or the beginning of August after the rules leave JCARR's jurisdiction. He thanked everyone that participated in the rule-making process.

Mr. Hills reported for the week ending June 3, 2017, there were 25 new inspections performed for a total of 3,620 inspections for the three-year inspection cycle ending June 30, 2019. He said that 10 NFAs (no further actions) were generated during this same time period, for a total of 306 NFAs for the grant cycle ending September 30, 2017.

Mr. Hills said, as of June 3, 2017, there were 21,539 registered USTs (underground storage tanks) and there were 3,627 owners of 7,263 registered facilities.

Chairman Rocco asked if the U.S. EPA had offered any insight as to where federal budgetary changes might be headed and how they might affect the BUSTR program. Mr. Hills responded saying that BUSTR's staff is closely monitoring the situation, but nothing definite has been shared at this time. He said the last indication from the U.S. EPA Region 5 Office in Chicago was that the funding dollars for fiscal year 2018, which begins on October 1, 2017, were in place, and any federal funding cuts would likely affect the 2019 fiscal year. He added that it appears the cuts may come to the grant program that covers the field inspector and release prevention section of BUSTR rather than to the leaking underground storage tank grant which funds the corrective action side of the program.

Mr. Fleming asked whether a tank registration fee increase or an added fuel tax was being considered as a funding source in the event there is a loss of federal funding. Mr. Hills said contingency plans are being discussed to address the potential impact of funding reduction. He noted that there has been no UST registration fee increase since 1999, and an increase may be justified if funding becomes a problem. He said regardless of how the funding falls, he does not anticipate the compliance inspections to stop.

### **Financial Reports:**

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

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

Mr. Leasor said the February, March and April financials were emailed to each member. He asked if there were any questions or concerns regarding these reports and there were none. He said since fiscal year 2017 annualized revenues and expenses would be discussed as part of the operating budget, he would not review the monthly financial reports.

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

Mr. Leasor said the proposed operating budget behind Tab 4 represents the approved budget and actual annualized expenditures for fiscal year 2017 and also presents the recommended budget for fiscal year 2018.

Mr. Leasor reported tank revenue for fiscal year 2017 was budgeted at \$9.4 million, and actual revenues were \$370,000 above the budgeted amount. He explained that the budget was built with the expectation that fees would be received for 20,200 USTs. However, fees were received for about 20,450 USTs. He

added that about \$425,000 in prior years' fees was paid during the year, and normally this is partially offset by refunds paid. However, there was a significant reduction in the number of refunds paid as a result of a staff vacancy and new personnel. He recommended tank revenue for fiscal year 2018 be budgeted at \$9.5 million. He said this estimate was built on the assumption that fees will be received for 20,350 tanks, and 26% of these USTs will be assured at the reduced deductible. He noted that fees were invoiced for 20,934 USTs, and historical data indicates fees for 97% of the tanks will be paid during the fiscal year.

Mr. Leasor said property transfer fees are projected to be \$80,000 for fiscal year 2018. He said a portion of the transfer fees were assessed during the current fiscal year, but are anticipated to be collected in fiscal year 2018. He stated collection of prior years' fees, less anticipated fee refunds, are projected to be \$200,000 in fiscal year 2018.

Mr. Leasor stated interest income is \$59,000 above the budgeted amount for fiscal year 2017 due to the interest rate for STAR Ohio being higher than anticipated. He explained that the estimate was built using a STAR Ohio interest rate of 0.5%, but the interest rate had improved and was 1.0% at the end of May. He said the projected interest income for fiscal year 2018 is \$370,000. He said this anticipated interest income is based on a STAR Ohio interest rate of 1.2% which will generate approximately \$205,000 plus anticipated interest of \$165,000 earned on the \$14 million invested in U.S. Treasuries and U.S. Agency Callable Bonds. Mr. Pisula commented that he expects the STAR Ohio interest rate to increase to 1.3% in the next month. He added that if there is another federal interest rate hike, the Board's investment portfolio should be reviewed to determine whether the strategy to reinvest the U.S. Treasuries and U.S. Agency Callable Bonds in like securities upon maturity makes sense, or whether some of the money should be moved back into the STAR Ohio account.

Mr. Leasor reported miscellaneous income received from requests for copies of records, and cash rebates for fiscal year 2017 was \$260. He recommended that miscellaneous income be budgeted at \$1,000 for fiscal year 2018.

Mr. Leasor pointed out that actual total income was \$428,000 above the \$9.6 million amount budgeted for fiscal year 2017.

Mr. Leasor said the claims expense is anticipated to be \$7.5 million for fiscal year 2017. He said in comparison the average claims expense for the past five years was \$7.2 million. He stated the proposed budget for the fiscal year 2018 claims expense is \$9 million.

Mr. Leasor said the salary line item expense was \$185,000 below the amount budgeted for fiscal year 2017. He said this was due to two positions being vacant for the entire year, and another two positions being vacant for a portion of the year. He recommended the fiscal year 2018 budget for salaries be set at \$1.4 million. He said this amount reflects filling the vacant positions, providing for a 2.5% pay increase for the staff and potential pay increases resulting from a compression study to be conducted in conjunction with the Department of Administrative Services' Human Resources Office.

Mr. Leasor reported that actual temporary services expenses were above the budgeted amount by about \$4,900, and he recommended the 2018 budget for temporary services be \$46,500. He said two temporary employees will continue to be used to fill staff vacancies. He said additional funding has

been included for the use of temporary employees for special projects and to assist staff during the annual fee statement mailing.

Mr. Leasor said the actual rent expense for fiscal year 2017 is \$134,500. He said this includes the rent for the Board's current office space plus a security deposit to be paid for the Board's new office space. He said it is anticipated the Board's office will relocate to the new location in September 2017. The anticipated rent expense for fiscal year 2018 is \$144,000. Chairman Rocco asked whether the rent expense covers both the relocation costs as well as the rent. Mr. Leasor explained that the estimate is only for the cost of rent and that relocation costs would be expensed as a legal and professional cost.

Mr. Leasor reported that actual expenses for office supplies were about \$2,800 below the budgeted amount. He noted that monitor and software purchases were less than anticipated. He said the amount requested for fiscal year 2018 is \$20,000. He explained that this amount includes monies for any standard office supplies, offsite storage, and any pre-packaged software with a cost of under \$500.

Mr. Leasor reported that printing and copying expenses for fiscal year 2017 were \$6,900 below the budgeted amount. He said the recommended budget for fiscal year 2018 remains at \$15,000.

Mr. Leasor said there were no expenses for advertising and staff development for fiscal year 2017 and pointed out that no advertising and staff development expenses are included in the budget for fiscal year 2018. He said in the past, advertising costs were incurred when job openings were published in newspapers. He explained that the state's Ohio Hiring Management System publishes job postings to [www.careers.ohio.gov](http://www.careers.ohio.gov) which links to other job search engines. Therefore additional advertising is no longer necessary. He said the staff is offered a variety of instructor-led training and e-learning courses through the Department of Administrative Services' Learning and Professional Development program and there is no cost for staff to participate in any of the courses.

Mr. Leasor said legal and professional actual expenses were below the budgeted amount by \$57,900. He said this was primarily due to costs for the collection of delinquent accounts being lower than anticipated. In addition, costs were not incurred for other professional services in fiscal year 2017. He said the amount requested for legal and professional expenses for fiscal year 2018 is \$230,000. He explained that this expense includes the cost for the services of the Assistant Attorney General, a hearing officer, the annual audit, Attorney General and Special Counsel fees related to the collection of delinquent accounts, database maintenance services, moving expenses and other miscellaneous and professional services. Chairman Rocco asked how much was budgeted for moving expenses. Mr. Leasor said moving costs were estimated to be \$17,200. Chairman Rocco asked, considering the variance of about \$58,000 for fiscal year 2017, what additional professional expenses are anticipated for fiscal year 2018. Mr. Leasor explained that costs for the collection of delinquent accounts have fluctuated from year to year, and he recommended keeping the legal and professional budget the same in the event those costs unpredictably increase in fiscal year 2018.

Mr. Leasor reported that traveling expenses were \$3,600 below the budgeted amount. He said \$5,000 was budgeted for travel costs anticipated for the ongoing subrogation litigation. However, the actual costs were only \$1,500. Additionally the travel reimbursement for Board members was slightly less than the estimate. He said the recommended budget for travel expenses for fiscal year 2018 is \$6,000.

Mr. Leasor stated that employee expenses were \$2,000 below the budgeted amount. He explained that this expense is for employee parking and said the recommended employee expense for fiscal year 2018 is \$4,700. He noted that parking costs are only anticipated for two months as there will be no cost for parking at the new office location.

Mr. Leasor said telephone expenses were \$1,400 below the budgeted amount. He said the budget was built with the assumption of an increase to the cost for the data connection and the voice over internet protocol (VoIP) phone system that were not incurred. He said the anticipated telephone expenses for fiscal year 2018 are \$17,100. He noted that this expense includes web access, website hosting, spam/virus filtering and the VoIP phone system. He explained that the budget increase was necessary to cover the costs to install hardware and wiring at the new office location.

Mr. Leasor reported that postage expenses were \$5,300 below the budgeted amount, and the recommended budget for postage expenses for fiscal year 2018 is \$30,000.

Mr. Leasor said the depreciation expense was below the budgeted amount by \$700, and the anticipated depreciation expense for fiscal year 2018 is \$21,100. He said the significant increase in the amount budgeted for depreciation expense is due to the anticipated purchase of furniture and equipment in the upcoming fiscal year.

Mr. Leasor pointed out that overall operating expenses were about \$255,900 below the amount budgeted for fiscal year 2017. He stated the recommended fiscal year 2018 operating expense budget total is \$1,968,000. He noted this is a \$131,600 increase from the 2017 operating expense budget. Chairman Rocco pointed out that the increase for salaries accounts for a majority of the proposed budget increase and about \$30,000 of the budget is for costs to relocate the office.

Chairman Rocco asked if there were any comments or questions regarding the proposed operating budget and there were none. He then requested a motion to approve the operating budget as proposed. Mr. Stephenson so moved. Mr. Geyer seconded. A vote was taken and all members voted in favor. The motion passed.

### ***Capital Budget***

Chairman Rocco called upon Mr. Leasor to present the proposed capital budget for fiscal year 2018.

Mr. Leasor said the proposed capital budget behind Tab 5 includes the fiscal year 2016 actual expenditures, the budgeted amounts and annualized expenditures for fiscal year 2017, and the recommended budget for fiscal year 2018.

Mr. Leasor said furniture and equipment was budgeted at \$40,000 for fiscal year 2017. He said in June of 2016 the Board initially approved \$5,000 for furniture and equipment, but an additional \$35,000 was approved by the Board at the March 2017 meeting in anticipation of the office relocation occurring in June 2017. He explained that since the move date was delayed, there were no expenditures for furniture and equipment in fiscal year 2017. He said the recommended furniture and equipment budget for fiscal year 2018 is \$45,000. He said this expense includes \$40,000 for office furniture needed at the new office space and provides \$5,000 for other equipment and furniture purchases, if needed.

Mr. Leasor reported that data processing and electronics were budgeted at \$7,500 for fiscal year 2017, and the actual expenditures for this line item were \$7,481. He said these expenditures included the purchase and installation of internet filtering and security hardware, a new computer and monitor, a laptop and a blackberry device. He said \$35,000 is recommended for data processing and electronics for fiscal year 2018. He noted the requested amount includes \$25,000 for the purchase of a new server to replace the four existing servers which were installed in 2010. He explained that the new server will increase the data storage capacity and allow for the scanning of older files into digital format. He said the budget also includes funds for the purchase of pre-packaged software with a cost above \$500 as well as replacement IT-related equipment as needed.

Chairman Rocco asked if the new server being considered will allow for memory expansion if needed, and Mr. Leasor confirmed that it did. Chairman Rocco said spending some extra funds to purchase a server with greater expansion capabilities may have benefits in the long term.

Mr. Leasor reported that the fiscal year 2017 total capital budget was set at \$47,500 and actual expenditures were about \$7,481. Mr. Leasor recommended a total fiscal year 2018 capital budget of \$80,000. He pointed out that the \$80,000 in proposed purchases in fiscal year 2018 is the driving factor to the increase in depreciation that was included in the operating budget.

Chairman Rocco asked if there were any questions or comments concerning the proposed capital budgets and there were none. He then requested a motion to approve the capital budget as proposed. Mr. Fleming so moved. Mr. Bryant seconded. A vote was taken and all members voted in favor. The motion passed.

Chairman Rocco requested a motion to obligate \$9 million for the payment of claims for fiscal year 2018. Mr. Geyer so moved. Mr. Pisula seconded. A vote was taken and all members voted in favor. The motion passed.

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

Mr. Leasor stated the 2017 program year fee statements were issued on April 27, 2017, and about \$9.5 million was invoiced to 3,327 owners of 20,900 USTs.

Mr. Leasor said, as of June 22, 2017, just over \$5.4 million, which represents about 57% of the amount billed, had been collected in per-tank fees. He said collections for the same period last year were \$5.1 million. He noted that collections to date for the 2017 program year reflects a 7.5% increase in comparison to the previous year, and is attributed to the timing of owner payments being received.

Mr. Leasor said between July 1, 2016, and June 22, 2017, about \$9.4 million was collected for 2016 program year fees, and \$412,000 was collected for prior years' fees net of any refunds paid.

Mr. Leasor reported for the 2017 program year, 15,400 tanks were billed at the standard deductible (\$55,000) per-tank fee and about 5,500 tanks were billed at the reduced deductible (\$11,000) per-tank fee. Mr. Leasor said, as of June 22, 2017, the fees had been paid at the standard deductible rate for a little over 8,400 tanks and at the reduced deductible amount for 3,500 tanks. He said fees for a total of 11,979 tanks had been paid by 2,036 owners. He said this compares to fees being paid for 10,888 tanks by 2,043 owners for the same period of time in the prior year. He noted that, in comparison to the



previous year, the number of tanks paid increased by about 10%. He said this is the result of a handful of midsize tank owners paying their fees earlier than last year.

Mr. Leasor said for the 2016 program year, a total of 3,189 owners have paid fees for 20,461 tanks. He indicated this amount would increase slightly by the end of the program year, June 30, 2017.

Mr. Leasor said the \$5.4 million collected to date represents 57.4% of the \$9,480,000 budgeted for the 2017 program year. He said so far for program year 2017, fees had been received for 11,979 USTs, which is 58.9% of the 20,350 tanks budgeted.

### **Compliance and Fee Assessment Report:**

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

Ms. Esquivel reported, as of May 31, 2017, refunds totaling \$23,051 had been paid to 17 owners for the 2016 program year. She said a total of \$40,154 was used to offset prior years' outstanding fees. She said the combined amounts total \$63,205, which represents 28% of the \$225,000 refund goal set for the 2016 program year. She reported, as of May 31, 2017, there are 2,838 pending refunds totaling \$1,399,372.

Ms. Esquivel said, as of May 31, 2017, the total collected by the Attorney General's Office and Special Counsel less the collection costs was \$217,154.

Ms. Esquivel said for the 2016 program year, 249 accounts totaling \$812,335 had been certified to the Attorney General's Office for collection.

Ms. Esquivel reported that four Orders Pursuant to Law are currently under appeal, with three of the appeals being under review and one hearing scheduled. She said that one Determination to Deny a Certificate of Coverage is under appeal and a hearing for that appeal is also scheduled.

Ms. Esquivel reported that four 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 3,044 owners had been issued Certificates of Coverage for program year 2016. She said there are 57 Applications for Certificates of Coverage currently being processed, 14 unresolved Pending Denials and 82 unresolved Determinations to Deny a Certificate of Coverage.

Ms. Esquivel stated there are 46 uncashed refund checks that total \$37,597. She said there are seven owners with pending refunds totaling \$9,190 who are in the process of being notified that more information is needed before their refunds may be issued. She said there were 25 owners with pending refunds totaling \$29,145 for which information had been requested, but no responses have been received.

### **Claims Reports:**

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

Ms. Duann said, as of June 1, 2017, the total maximum liability of in-house open claims is \$30.4 million. She said that using the historical claim payout ratio of 75%, the actual anticipated claim liability of unpaid in-house claims is about \$22.8 million.

Ms. Duann reported that as of June 1, 2017, a total of 1,490 claims with a total face value above the deductible amount were pending review. She noted that claims received in the months of March and April are currently being reviewed and settled by the staff.

Ms. Duann stated that, as of June 1, 2017, a total of 17 claim settlement determinations were under appeal. She noted that since the March Board meeting, six new claim settlement appeals were received, and three claim settlement appeals had been resolved.

Ms. Duann reported that, during the last 11 months, a total of 614 claims were received, and the staff settled or closed 692 claims in these months. She added that for the last 11 months, the total claim settlement offer was \$6.2 million, and the average per claim payout was about \$9,300. She pointed out that the average claim payout ratio was slightly above 78% of the net value and this is slightly higher than the historical average of 75%. She said the staff is currently focusing on the closure of problematic claims with various issues, and this may slow down the claim settlements. Chairman Rocco pointed out that the percentage of disallowed costs has dropped from 20% in previous years to 17% this year. Ms. Duann explained that the settlement percentages correlate, and if there is a decrease in the percentage of disallowed costs, there is an increase in the percentage of payout.

Ms. Duann said that, during the last 11 months, 69 eligibility applications were received and 63 eligibility determinations were issued. She said an average of six eligibility applications per month were received. She said currently, 34 eligibility applications are pending review and seven eligibility determinations are under appeal. She noted that the number of eligibility determinations under appeal has not changed since the March Board meeting.

Ms. Duann reported that, during the last 11 months, a total of 120 requests for cost pre-approval had been received and 130 cost pre-approval notifications were issued. She added that 32 cost pre-approval requests are currently pending review. She said in general, the number of requests for cost pre-approval is less than the number of requests received in the previous years.

Mr. Geyer asked whether information concerning the claims that have been suspended due to litigation could be provided in the future claims reports, including the number of owners affected, the number of claims under suspension, and the total face value amount of all suspended claims. Director Richmond indicated that including this information in the reports could be done. Chairman Rocco commented that having these statistics would be helpful for the Board members to better understand and track the effects of the suspension of the processing of claims and Mr. Bryant was in agreement. Chairman Rocco asked if there were any additional questions concerning the claims reports and there were none.

## **Unfinished Business:**

### ***Office Lease Update***

Chairman Rocco called upon Starr Richmond, Executive Director, to discuss the office lease.

Director Richmond explained that the landlord of the space selected for the Board's new office location had no experience leasing to State of Ohio agencies and as a result, the drafting of the lease became a gruesome and lengthy process that involved herself, Chairman Rocco, the landlord's attorney, the brokers, and three attorneys in the Attorney General's Office. She said they had finally worked through all of the issues concerning the lease and she expected it to be executed following the Board meeting. She noted that the original intent was to move into the new office space at the end of June. However, due to the delay in preparing the lease, it is likely the move will occur at the end of September. She noted that the buildout of the new office space is expected to take 60 to 90 days.

Chairman Rocco said that a significant amount of time and effort went into preparing an agreeable lease. He said that Ms. Richmond and Ms. Croskey did a great job ensuring that the original understanding of the rental terms were reflected in the lease and he thanked them for their hard work.

## **New Business:**

### ***Administrative Appeal***

Chairman Rocco called upon Jennifer Croskey, the Board's attorney, to present the Report and Recommendation concerning the appeal of a claim settlement determination issued to Site Oil Company of Missouri (Site Oil). Ms. Croskey commented that the Report and Recommendation is typically presented to the Board by its hearing officer, Howard Silver. However, Mr. Silver was unable to attend the meeting.

### **Claim # 9735-0008/04/05/07-A, Site Oil Company of Missouri 1903 Riverside Drive, Cincinnati, Ohio.**

Ms. Croskey said the case before the Board involved an appeal filed by Site Oil concerning a petroleum release at 1903 Riverside Drive in Cincinnati, Ohio, that was reported to the State Fire Marshal on April 5, 2007. She said the claim application seeking the reimbursement of corrective action costs was submitted on August 28, 2015, and the vast majority of the claimed costs were disallowed by the Fund's Executive Director because the costs were not timely filed. She said additional costs were disallowed by the Director because mandatory pre-approval for the corrective action costs was not sought, and other non-reimbursable administrative costs were denied. She said there were also costs for certain work that were denied because the claimed costs exceeded the amount the Fund typically reimburses for similar work.

Ms. Croskey stated that Site Oil timely filed a written objection to the Director's settlement determination, and requested that an adjudication hearing be held. She stated that Site Oil received notification of the hearing, but no representative for Site Oil attended the hearing. She explained that she presented the Director's position to the hearing officer and submitted information into the hearing record demonstrating that the disallowed costs were in accordance with the law. She pointed out that, in his report, Mr. Howard went into great detail of his findings of facts, including relevant dates and applicable rules. She said, ultimately, Mr. Silver concluded that a preponderance of the evidence

proved the validity of the disallowances as determined by the Director in the April 11, 2016 claim settlement determination and he recommended that it be affirmed.

Chairman Rocco asked whether Site Oil provided any reason for not attending the hearing. Ms. Croskey stated that she had contacted Site Oil a number of times, but had received no communication as to whether they would participate in the hearing. Chairman Rocco asked if Site Oil had been sent the appropriate notice concerning the hearing via certified mail, and Ms. Croskey confirmed that they had. Mr. Bryant asked if Site Oil provided any justification for submitting its claim application late. Ms. Croskey noted that Site Oil's corporate office is located in Missouri and perhaps they are unfamiliar with Ohio's claim reimbursement process. Director Richmond added that it appeared that Site Oil waited until an NFA had been issued by the State Fire Marshal before submitting its claim, rather than to submit their costs incrementally as the corrective action work was performed.

Chairman Rocco asked whether there were any additional questions and there were none. He then requested a motion to adopt the findings of facts, conclusions of law, and recommendation of the hearing officer that the April 11, 2016 settlement determination issued by the Director of the Financial Assurance Fund to the Site Oil Company of Missouri comprises valid state action as a matter of fact and law and that it be upheld. Mr. Stephenson so moved. Mr. Fleming seconded. He then called for a roll call. The following members voted in the affirmative: Messrs. Bryant, Fleming, Geyer, Hills, Pisula, Stephenson and Rocco. There were no nays. The motion passed.

#### ***Hearing Officer's Contract Renewal***

Chairman Rocco called upon Ms. Richmond to discuss the contract for the Board's hearing officer, Howard Silver.

Director Richmond said Mr. Silver has agreed to extend his contract as the Board's hearing officer for the upcoming fiscal year of July 1, 2017 through June 30, 2018. She said the terms of the agreement are at the same hourly rate of \$110, which has not changed since 2002. She added that the contract gives a minimum of five hours for the contract period and he is not bound to supply any more than 300 hours for the year. The contract also includes a maximum payment of \$2,500 per appeal, unless approved otherwise.

Director Richmond requested a motion to authorize the Chairman to enter into an agreement with Howard Silver for the continuation of hearing officer services for the period of July 1, 2017 through June 30, 2018. Mr. Bryant so moved. Mr. Geyer seconded. Chairman Rocco commented that Mr. Silver has done a phenomenal job as the Board's hearing officer for many years. He added that Mr. Silver has always worked hard for the Board and noted that his reports are very thorough. He asked if there were any questions or discussion concerning the contract and there were none. A vote was taken and all members were in favor. The motion passed.

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

Chairman Rocco called upon Ms. Richmond to discuss the contract for the Assistant Attorney General's legal services.

Director Richmond said the Attorney General has agreed to allow Jennifer Croskey to continue to provide legal services to the Board. She said as the Board's Assistant Attorney General, Ms. Croskey

performs all litigation and counsel related tasks. She explained that the Board pays 75% of her salary and benefit costs plus a percentage for indirect costs related to support services such as telephone, supplies, office space, etc. She noted the contract includes a clause that if the actual costs will exceed the amount stipulated in the contract, the parties can renegotiate the contract. She said the amount in the proposed contract is \$108,391. She noted this was a slight decrease from the amount in fiscal year 2017, and she said she believed the decrease is attributed to a decrease in the indirect costs.

Ms. Richmond requested a motion to authorize the Chairman to enter into the agreement with the Attorney General's Office for the continuation of legal services in an amount not to exceed \$108,391 for the period of July 1, 2017, through June 30, 2018. Mr. Bryant so moved and Mr. Geyer seconded. Chairman Rocco asked if there were any questions or discussion concerning the contract and there were none. A vote was taken and all members were in favor. The motion passed.

### ***Database Consultant Contract***

Chairman Rocco called upon Ms. Richmond to discuss the database consultant contract.

Ms. Richmond said the Board's database known as STARRS (Statistical Tank and Reimbursement Records System) is a customized software system used for many day to day functions including tracking owner accounts, processing claims and generating financial statements. She said the Board has historically executed a maintenance contract, which has a monthly retainer of \$1,250. She explained that this allows for the database to be expanded, new reports to be created, existing reports to be fixed, and any glitches or defects to be corrected without delay.

Ms. Richmond then requested a motion to authorize the Chairman to enter into an agreement with Software Engineering LLC for various updates and fixes to the existing STARRS database in an amount not to exceed \$15,000 for fiscal year 2018. Mr. Fleming so moved and Mr. Geyer seconded. A vote was taken and all members were in favor. The motion passed.

### ***Personnel Compensation***

Chairman Rocco stated that, as discussed during the budget presentation, over the past two years the Board's staff has been given pay increases that were consistent with the terms of the contract negotiated for other state employees. He said this is the third year of the contract, which has provided for an annual 2.5% salary increase. He explained that any adjustment to the salary of the Board's Executive Director, Starr Richmond, requires Board approval. He then requested a motion to approve a 2.5% salary increase for Starr Richmond with an effective date of June 25, 2017. Mr. Geyer so moved and Mr. Stephenson seconded. After a brief discussion, a vote was taken and all members were in favor. The motion passed.

### ***Hardship Applications***

Chairman Rocco called upon Ms. Richmond to present the hardship applications.

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 granting hardship status allows for the acceleration of the review of the claims submitted by the owner. Ms. Richmond noted that granting hardship status does not increase the amount of reimbursement to the tank owner. She stated by accelerating the review of the claim, it 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 and at that time, the owner may reapply for hardship status.

Ms. Richmond stated that, in determining hardship status, the application and a minimum of two years of income tax records are reviewed. She said, in addition, a U.S. Environmental Protection Agency (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.

**Claim # 11387-0001/05/16/91, Washington & Lee Service Inc.**

Ms. Richmond said Washington & Lee Service Inc. is the responsible party for a release that occurred in the 1990 program year at 2080 Lee Road in Cleveland Heights, Ohio. She noted that Washington & Lee Service Inc. was dissolved in 2007, but as the owner of the corporation, David Saginor is a responsible person and is requesting the Board grant hardship status to him.

Ms. Richmond explained that this is his fourth request for hardship status, and to date, the Fund has reimbursed \$523,000. She noted there are currently no unsettled claims in house.

Ms. Richmond said all underground tanks were removed in June 1991 and the property was sold in October 2006. She said Mr. Saginor provided the financing for the new owner and the new owner makes a monthly payment to Mr. Saginor, which totals \$24,000 annually. She added that Mr. Saginor has continued the corrective actions at the site.

Ms. Richmond said the estimated cost of corrective actions for the next year is \$50,000, and the U.S. EPA financial capacity test estimates that Mr. Saginor could only afford corrective action costs of about \$34,000 based on his cash flow and debt capacity.

Ms. Richmond recommended that, since the amount he could afford is insufficient to cover the estimated cost of corrective actions, she recommended the Board approve the application and grant hardship status to Mr. Saginor. Mr. Stephenson so moved and Mr. Geyer seconded. A vote was taken and all members voted in the affirmative. The motion passed.

**Claim # 13755-0001/05/24/91, Raymond Cooper**

Ms. Richmond said that Raymond Cooper is the responsible person for a release that occurred in the 1990 program year at 111 East Main Street in Lucas, Ohio, and this is his 13th request for hardship status. She said to date, the Fund has reimbursed about \$374,000 for corrective action costs for this release. She said there are no open claims in house and the corrective action costs for the next 12 months are estimated to be \$120,000.

Ms. Richmond explained that Mr. Cooper is retired and no longer owns the property, but he is continuing the corrective actions. She said that he and his wife have serious health issues, and based on his tax records and the information he provided in the hardship application, his household income is solely from pension and social security benefits, and it exceeds his living expenses by about \$16,000 annually.

Ms. Richmond said that based on the U.S. EPA financial capacity test, Mr. Cooper could only afford corrective action costs of \$33,000 based on his annual retirement income less living expenses.

Ms. Richmond said because the EPA model estimates he can only afford one quarter of the estimated correction costs to be incurred over the next 12 months as well as considering that he is retired and in poor health, she recommended the Board approve the application and grant hardship status to Mr. Cooper. Mr. Stephenson so moved and Mr. Bryant seconded. A vote was taken and all members voted in the affirmative. The motion passed.

**Claim # 15303-0001/06/24/14, Rohr's Auto Service**

Ms. Richmond said that Robert Rohr is the responsible person for a release at 112 First Street in Massillon, Ohio, that was discovered when the tanks were removed in June 2014. She said this is his third request for hardship status. She said to date, the Fund has reimbursed a little over \$51,000 for corrective action costs for this release. She said there are no open claims in house and the corrective action costs for the next 12 months are estimated to be \$85,000.

Ms. Richmond stated that Mr. Rohr is retired and is 80 years old. She said he had continued working until he closed the business in 2013. She explained that he sold a portion of the assets to pay his outstanding bills. She said his current primary source of income is his social security benefits which total just under \$30,000 annually. She noted that he is trying to sell the property, but has been unable to sell it without a determination of no further action by the State Fire Marshal. She said he has taken out an equity loan on his house in order to pay his living expenses and miscellaneous costs associated with the release.

Ms. Richmond said that based on the U.S. EPA financial capacity test, Mr. Rohr does not have adequate cash flow or the ability to carry additional debt in order to pay the corrective action costs.

Ms. Richmond recommended the Board approve the application and grant hardship status to Mr. Rohr. Mr. Hills so moved and Mr. Fleming seconded. A vote was taken and all members voted in the affirmative. The motion passed.

**Claim # 18344-0001/10/26/98, Red Stripe Associates, LLC**

Ms. Richmond said Red Stripe Associates, LLC is the responsible party for a release that was discovered in 1998 at 50708 National Road in Saint Clairsville, Ohio. She said Gary Glessner submitted the application requesting the Board grant hardship status to the LLC. She noted this was Red Stripe Associates' 16th request for hardship status.

Ms. Richmond stated that to date, the Fund has reimbursed over \$223,400 for corrective action costs for this release. She said a cost pre-approval request was received for a RAP (remedial action plan), and that RAP is estimated to cost \$85,000.

Ms. Richmond said the property and business were sold to Sober Systems LLC at a loss in November 2008 and Red Stripe Associates provided financing to the new owner. She said Red Stripe Associates received the final payment in November 2013 and that payment was used to pay the mortgage on the property. She said that currently, Red Stripe Associates, LLC has no additional funds. However, the LLC is still responsible for and is continuing the corrective actions.

Ms. Richmond said that based on the U.S. EPA financial capacity test and information submitted with the application, there is less than a 50% probability that Red Stripe Associates can afford \$86,000 in corrective action costs in the next year. She added that Red Stripe Associates cannot acquire financing or self-finance ongoing corrective actions.

Ms. Richmond recommended the Board approve the application and grant hardship status to Red Stripe Associates, LLC. Mr. Hills so moved and Mr. Bryant seconded.

Mr. Hills asked what effect granting hardship status has on claim reimbursement. Chairman Rocco explained that generally claim applications are processed in the order they are received, but responsible parties that have been granted hardship status will have their claims given priority. Ms. Richmond added that a claim for which hardship has been granted is generally reviewed within 30 days.

Chairman Rocco asked if there were any additional questions or discussion and there were none. A vote was taken and all members voted in the affirmative. The motion passed.

**Claim # 19924-0001/05/06/14, P & W Properties, LLC d/b/a Route 22 Sunoco**

Ms. Richmond said that P & W Properties, LLC is the responsible party for a release that was discovered in program year 2013 at 521 Lincoln Avenue in Lancaster, Ohio. She said as the owners of P & W Properties, LLC, Donald and Cindy Husband are requesting the Board grant hardship status to the LLC. This is its third request for hardship status.

Ms. Richmond stated that to date, the Fund has reimbursed \$38,000 for corrective action costs for this release. She said there are no open claims in house and the corrective action costs for the next 12 months are estimated to be \$56,000.

Ms. Richmond said Mr. and Mrs. Husband are the only members of P & W Properties, and they own the property at 521 Lincoln Avenue. She said the station located on the property is operated by another LLC, which is called Route 22 Enterprises, LLC. She noted that Mr. and Mrs. Husband are also owners of Route 22 Enterprises. Ms. Richmond said, per a conversation with Mrs. Husband, Route 22 Enterprises is the entity that paid the remediation costs and, therefore, the financial information provided for Route 22 Enterprises was used to determine hardship status.

Ms. Richmond said that based on the U.S. EPA financial capacity test, the model estimates that Route 22 Enterprises could only afford corrective action costs of \$33,600.

Ms. Richmond said since the amount Route 22 Enterprises could afford is insufficient to cover the estimated cost of corrective actions over the next year, she recommended the Board approve the application and grant hardship status to P & W Properties, LLC.

Mr. Stephenson asked Ms. Richmond to clarify why the assets of the Route 22 Enterprises, LLC were used for the financial capacity test rather than P & W Properties' financial information. Ms. Richmond explained that P & W Properties, LLC reports itself as the owner of the tanks, and its only source of income is rent it receives from Route 22 Enterprises, LLC. She said that Route 22 Enterprises is the operator of the tanks and the corrective action work is being done by Route 22 Enterprises since it has



the financial resources. Chairman Rocco commented that from the State Fire Marshal's regulatory perspective both the owner and the operator of the tanks could be considered to be responsible parties.

Mr. Stephenson said it is concerning to him that the individual owners that make up the LLCs may have structured their business in such a way that they might actually hold significant assets that are not being considered when evaluating their need for hardship status. Chairman Rocco said the concern raised by Mr. Stephenson is worth consideration and discussion and it may be worth looking at the issue from a statutory and legal perspective. He said unfortunately the hardship program is currently set up so that only the financial information of the responsible party can be used for the basis of the evaluation, regardless of whether it is an individual, LLC or other corporate entity. Following some further discussion, Mr. Stephenson called the question, and Mr. Bryant moved to approve the application and grant hardship status to P & W Properties, LLC. Mr. Fleming seconded. A vote was taken and all members voted in the affirmative. The motion passed.

#### **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 the lists behind Tabs 12 and 13 are listings of facilities that, since the March Board meeting, had been issued or denied a program year 2015 or 2016 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 identified, 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 2015 program year Certificates of Coverage for the 38 facilities included on the list behind Tab 12.

Mr. Geyer moved to ratify the issuance of the 2015 Certificates of Coverage for the facilities listed. Mr. Hills seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Richmond requested the Board ratify her actions with respect to the denial of the 2015 program year Certificates of Coverage for the two tanks located at the two facilities included on the list behind the Tab 12 green divider page. She noted that just one tank at each site is being denied and there are Certificates of Coverage for other tanks at these facilities.

Mr. Geyer moved to ratify the denial of the 2015 Certificates of Coverage for the two tanks that were listed. Mr. Fleming seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Richmond requested the Board ratify her actions with respect to the issuance of the 2016 program year Certificates of Coverage for the 91 owners of 169 facilities included on the list behind Tab 13.

Mr. Bryant moved to ratify the issuance of the 2016 Certificates of Coverage for the facilities listed. Mr. Fleming seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Richmond requested the Board ratify her actions with respect to the denial of the 2016 program year Certificates of Coverage for the 33 owners of 37 facilities included on the list behind the Tab 13 green divider page.

Mr. Geyer moved to ratify the denial of the 2016 Certificates of Coverage that were listed. Mr. Hills seconded. A vote was taken and all members were in favor. The motion passed.

**Confirm Next Meeting and Adjourn:**

Chairman Rocco said that the next Board meeting will be held in the Board's current office location in the LeVeque Tower on Wednesday, September 13, 2017, at 10:00 a.m. Mr. Hills asked whether the September meeting agenda will include an executive session with Special Counsel concerning the Board's ongoing litigation. Chairman Rocco confirmed that it would. Given the importance of the September meeting, he asked the members to look at their calendars to confirm they will be able to attend the meeting.

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