



Petroleum Underground Storage Tank Release Compensation Board

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**MINUTES OF THE 194th MEETING OF THE
PETROLEUM UNDERGROUND STORAGE TANK
RELEASE COMPENSATION BOARD
June 8, 2022 – 10:00 a.m.**

BOARD MEMBERS IN ATTENDANCE

Jim Rocco
John Hull
Steve Bergman
Don Bryant
Larry Burks
Scott Fleming
Dan Ridi
Tom Stephenson

EX-OFFICIO MEMBERS IN ATTENDANCE

Scott King, representing Director Sheryl Creed Maxfield, Ohio Department of Commerce
Donna Waggener, representing Director Laurie Stevenson, Ohio Environmental Protection Agency
Michael Lenzo, representing Robert Sprague, State Treasurer of Ohio

OTHERS IN ATTENDANCE

Starr Richmond	Executive Director, PUSTRCB
Madelin Esquivel	Assistant Director, PUSTRCB
Don Leasor	Chief Fiscal Officer, PUSTRCB
Hannah Brame	Claims Supervisor, PUSTRCB
Jonathan Maneval	Executive Assistant, PUSTRCB
Natasha Natale	Assistant Attorney General
Lisa Thiergartner	Rea & Associates, Inc.
Dan Adams	Atlas Technical Consultants
Michael Baker	BJAAM Environmental, Inc.
Emily Mackenzie	Pinnacle Environmental Management Support, Inc.

Minutes submitted by:


Jonathan Maneval
Executive Assistant

Call to Order:

Chairman Rocco convened the one hundred ninety-fourth meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, June 8, 2022. Acting under the authority of Section 3 of Substitute House Bill Number 51, effective February 17, 2022, the public meeting was conducted via a ZOOM audio/visual conference call.

The following members were in attendance: Jim Rocco; Steve Bergman; Don Bryant; Larry Burks; Scott Fleming; John Hull; Dan Ridi; Tom Stephenson; Scott King, representing Director Sheryl Creed Maxfield, Ohio Department of Commerce; Donna Waggener, representing Director Laurie Stevenson, Ohio Environmental Protection Agency; and Michael Lenzo, representing Robert Sprague, State Treasurer of Ohio.

Chairman Rocco announced that Scott King was recently appointed as Bureau Chief of the Bureau of Underground Storage Tank Regulations (BUSTR) and called on him to introduce himself. Mr. King stated that he stepped into the role of Bureau Chief following the retirement of Steven Krichbaum and was appointed to serve as Director Maxfield's designee to the Board. He said he previously served as Deputy Chief of Operations at the Department of Natural Resources, Division of Oil and Gas overseeing eight sections throughout the state. He noted that he spent the 32 years of his career in emergency operations in several states in the Midwest. He thanked BUSTR's staff for bringing him up to speed and said he looked forward to working with BUSTR's staff and the Board.

Chairman Rocco stated that Natasha Natale was recently assigned to serve as the Board's Assistant Attorney General and Ms. Natale briefly introduced herself.

Minutes:

Chairman Rocco asked if there were any comments or questions regarding the minutes from the March 16, 2022 Board meeting and there were none. Vice-Chairman Hull moved to approve the minutes and Mr. Burks seconded. A vote was taken and all were in favor. The minutes were approved as presented.

BUSTR Report:

Chairman Rocco called upon Scott King, Bureau Chief, to present the BUSTR report.

Mr. King reported that Jeremy Bauserman was promoted to a release prevention supervisor position and a new underground storage tank (UST) inspector, Bart Welter, was hired for the Dayton area. He said BUSTR is actively working to fill four positions that remain open and the intent is to be fully staffed by mid-summer.

Mr. King stated that \$74,000 in LUST (leaking underground storage tank) grant dollars was dedicated to performing responsible party searches for fiscal year 2022. He said 62 responsible party searches had been completed thus far.

Mr. King said BUSTR's staff is still doing some teleworking, with team members working in the central office two to three days a week. He said it is working out fairly well and agency expectations are being met.

Mr. King said the fiscal year 2022 LUST grant was allocated and a new LUST grant application was submitted to the Office of Underground Storage Tanks in May 2022. He said the UST grant application for fiscal years 2022 and 2023 was submitted and approved.

Mr. King said BUSTR's staff has been going through normal training. He noted that [24] students completed the certified UST installer and inspector courses in the spring. He indicated that BUSTR would be providing continuing education courses in the fall and again in the spring.

Mr. King reported that BUSTR has started a project to update the OTTER (Ohio Tank Tracking & Environmental Regulations) database to a new version and enhance the operational capabilities of the system.

Mr. King said there are currently 21,053 registered tanks and just over 3,400 registered facilities. He said 31,836 petroleum releases had been granted no further action (NFA) status since the beginning of the BUSTR program. He reported that 236 NFAs were issued in the current reporting cycle and 6,969 inspections were completed in the current three-year inspection cycle.

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 said since fiscal year 2022 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 presents the approved budget and actual annualized expenditures for fiscal year 2022 and also presents the recommended budget for fiscal year 2023.

Mr. Leasor reported that tank revenue for fiscal year 2022 was budgeted at \$8.34 million for 20,160 USTs, and actual revenues were \$297,000 above the budgeted amount. He recommended tank revenue for fiscal year 2023 be budgeted at \$8.4 million. He said fees for the \$55,000 and \$11,000 deductibles are \$350 and \$550 per tank, respectively. He explained that the tank budget revenue estimate was built on the assumption that fees will be received for 20,180 tanks, and 27% of these USTs will be assured at the reduced deductible. He noted that fees were billed for 20,659 USTs for the annual mailing in April, and explained that this was an increase over the number of tanks billed in the prior year. He said tank fee revenue includes property transfer fees, which are projected to be \$100,000 for fiscal year 2023. He said a portion of the transfer fees were assessed during the current fiscal year, but are anticipated to be collected in fiscal year 2023. He stated that collection of prior years' fees, less anticipated fee refunds, are projected to be \$150,000 in fiscal year 2023.

Mr. Leasor stated that interest income was \$12,400 below the budgeted amount for fiscal year 2022. He explained that, as of May 31, 2022, the investments in U.S. treasuries and U.S. agency callable bonds had an unrealized loss totaling \$776,000. He said the decrease in market value is driven by an increase in interest rates which has an inverse effect on the market price of the bonds. He commented

that the Board's policy is to hold these investments to maturity; and therefore, the full principle is received upon maturity and there is no realized loss on the investments. He said the projected interest income for fiscal year 2023 is \$216,000. He said this anticipated interest income is based on an estimated interest rate of 200 basis points for STAR Ohio.

Mr. Leasor reported that miscellaneous income totaled \$140. He explained that this income was from payments for printing and copying of public records requests, and cash rebates on purchases. He recommended that miscellaneous income be budgeted at \$1,000 for fiscal year 2023.

Mr. Leasor stated that the actual total income was \$283,500 above the \$8.4 million budgeted for fiscal year 2022.

Mr. Leasor said the claims expense is anticipated to be \$11.5 million for fiscal year 2022. He said this includes the third payment to BP under a settlement agreement. He stated that the proposed budget for the fiscal year 2023 claims expense is \$9 million. He noted that this includes the final payment of \$500,000 due to be paid to BP in July 2022 as part of the settlement agreement.

Mr. Leasor said the salary line item expense was \$104,000 below the amount budgeted for fiscal year 2022 due to staff vacancies. He recommended the fiscal year 2023 budget for employee salaries be set at \$1.54 million. He said this amount reflects a 3% cost of living adjustment included in the approved biennial budget to maintain parity with increases provided for in the union contract

Mr. Leasor reported that temporary services expenses were \$30,000 below the budgeted amount. He said although none of the temporary services budget was expended in fiscal year 2022, he recommended the 2023 budget for temporary services be \$30,000 in the event money is needed for temporary personnel.

Mr. Leasor said the actual rent expense for fiscal year 2022 was \$4,300 below the budgeted amount. He recommended the fiscal year 2023 budget for rent be set at \$154,000.

Mr. Leasor reported that actual expenses for office supplies were about \$2,900 below the budgeted amount. He said the amount requested for fiscal year 2023 is \$20,000. He explained that this amount includes funding for standard office supplies, offsite storage, and information technology hardware and software with a cost of under \$500. He reported that printing and copying expenses for fiscal year 2022 were \$5,500 below the budgeted amount. He said the recommended budget for fiscal year 2023 remains at \$15,000.

Mr. Leasor said legal and professional actual expenses were below the budgeted amount by \$10,000. He said the amount requested for legal and professional expenses for fiscal year 2023 is \$270,000. 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; a service contract for the scanners; a three-year subscription for data backup and software updates; an information security risk assessment; actuarial services to assist with the claims study; and other miscellaneous professional services.

Mr. Leasor reported that travel expenses were \$5,000 below the budgeted amount. He recommended

the budget for travel expenses for fiscal year 2023 be \$5,000, which includes Board member travel expenses.

Mr. Leasor stated that employee expenses were \$700 below the budgeted amount. He said the recommended budget for employee expenses for fiscal year 2023 is \$1,000.

Mr. Leasor said telephone expenses were \$1,250 below the budgeted amount. He said the anticipated telephone expenses for fiscal year 2023 are [\$14,400]. He noted that this expense includes web access, spam and virus filtering, phone service, and employee messaging software.

Mr. Leasor reported that postage expenses were \$2,800 above the budgeted amount. He explained that this was due to an unforeseen increase in postage rates. He said further postage rate increases are anticipated and he recommended the budget for postage expenses for fiscal year 2023 be \$35,000.

Mr. Leasor said the depreciation expense was below the budgeted amount by \$700 and the anticipated depreciation expense for fiscal year 2023 is \$31,500.

Mr. Leasor pointed out that overall operating expenses were about \$161,000 or 8% below the amount budgeted for fiscal year 2022. He stated that the recommended fiscal year 2023 operating expense budget totals \$2,115,900, which is a \$120,000 increase from the 2022 budget. He noted that the increase is primarily due to an increase in salaries and anticipated legal and professional expenses.

Capital Budget

Chairman Rocco called upon Mr. Leasor to present the proposed capital budget for fiscal year 2023.

Mr. Leasor said the proposed capital budget includes the fiscal year 2021 actual expenditures, the budgeted amounts and annualized expenditures for fiscal year 2022, and the recommended budget for fiscal year 2023.

Mr. Leasor said furniture and equipment was budgeted at \$5,000 for fiscal year 2022 and there were no expenditures for this budget line item. He said the recommended furniture and equipment budget for fiscal year 2023 is \$5,000. He said this funding is for any furniture purchases that may be needed.

Mr. Leasor reported that data processing and electronics were budgeted at \$35,000 for fiscal year 2022, and the actual expenditures for this line item were \$29,248. He said these expenditures included the purchase of a laptop computer, an air conditioning unit for the server room, two multi-function printers, and a module to allow for checks to be printed from the STARRS (Statistical Tank and Reimbursement Records System) database. He said \$40,000 is recommended for data processing and electronics for fiscal year 2023. He noted the amount requested includes costs to upgrade the hardware used for backup data storage, a contract to customize and configure the Board's document management software and to interface it with the Board's STARRS database, and costs for the replacement of other IT equipment if needed.

Vice-Chairman Hull asked the age of the computer equipment and whether it is able to support the newest software updates. Mr. Leasor said the staff computers were recently purchased in 2019 or 2020. He commented that money is available in the proposed budget to replace a computer if one breaks

down.

Information Security Risk Assessment

Mr. Leasor called on Lisa Thiergartner a senior consultant with Rea & Associates, Inc. to discuss an Information Security Risk Assessment proposal.

Ms. Thiergartner briefly introduced herself and her role at Rea & Associates and then provided an overview of the scope of the proposed risk assessment. She said Rea & Associates uses the NIST (National Institute of Standards and Technology) Cybersecurity Framework, which looks at 110 controls and whether they are met, not met, or partially met. She said the proposed work will include scans of the Board's network and website to identify vulnerabilities that pose risks. In addition, the assessment will include interviews of Board staff to understand where data is being stored, what software is being used, and how IT equipment is used in day-to-day operations. She said they will review IT policies and look at the security controls that are in place. She said doing a comprehensive information security risk assessment will help the Board to understand where it currently stands in terms of cybersecurity and to identify vulnerabilities and threats that could put the Board at risk.

In response to questions posed by Vice-Chairman Hull, Ms. Thiergartner indicated the assessment will look at multifactor authentication and endpoint detection and commented that these items are an important requirement for cyber insurance. Vice-Chairman Hull asked if the Board is currently accepting electronic submissions instead of paper copies and Chairman Rocco explained that some documents can be submitted by email but generally the Board is not set up for electronic filing or electronic signatures. Mr. Burks commented that the primary concerns for public agencies are protecting data from being hijacked and the security of funds. Ms. Thiergartner said the assessment will help ensure there is the ability to restore data if a ransomware incident occurs and help establish a response plan if personal information is exposed by hackers. Mr. Stephenson asked whether Rea & Associates will help to implement their recommendations. Ms. Thiergartner said there are some limitations to what Rea & Associates can do because of the firm's audit work for the Board. She explained that the firm can provide recommendations for resources and vendors to use and can help develop policies for the Board to adopt. Vice-Chairman Hull asked if a penetration test could be done to see how robust the systems are. Ms. Thiergartner indicated a penetration test could be done but her recommendation is for it to be done after the assessment is completed and there is an opportunity to put security controls in place, if needed.

Chairman Rocco commented that security is important because the Board is heading more and more into a digital world and he would feel more comfortable if the risk assessment is done so the Board will know what the weak spots are and what problems need to be addressed. He mentioned that fixes may require policy updates, new software, and replacing hardware. He stated that the contract amount for the proposed assessment is around \$12,000. Vice-Chairman Hull asked whether the assessment might identify some dramatic threat or risk requiring a capital expenditure to fix and whether funding would be available for it in the proposed capital budget. Ms. Thiergartner said segmenting the network or replacing the firewall could perhaps require a capital expenditure but expressed that she does not anticipate any expenditures.

Obligate Money for the Payment of Claims

Chairman Rocco said the Board would need to obligate money for the payment of claims and Mr. Leasor requested a motion to obligate \$9 million for the payment of claims during fiscal year 2023. Vice-Chairman Hull so moved and Mr. Bergman seconded. A vote was taken and all were in favor. The motion passed.

Approval of the Operating Budget

Chairman Rocco requested a motion to approve the fiscal year 2023 operating budget as proposed. Vice-Chairman Hull so moved and Mr. Ridi seconded. The Chairman asked if there were any questions concerning the proposed operating budget and Mr. Burks asked if increasing fuel costs were factored into the budget. Mr. Leasor said the budget for Board member travel should be sufficient for any adjustments to the reimbursable mileage rate. Chairman Rocco commented that most expenses are not directly fuel related and many of the big-ticket items such as salaries, rent, and legal and professional expenses are fixed. The Chairman asked if there were any other questions about the operating budget and there were none. A vote was taken and all were in favor. The motion passed.

Approval of the Capital Budget

Chairman Rocco requested a motion to approve the fiscal year 2023 capital budget as proposed. Vice-Chairman Hull so moved and Mr. Stephenson seconded. The Chairman asked if there were any questions concerning the proposed capital budget and there were none. A vote was taken and all were in favor. The motion passed.

Information Security Risk Assessment Contract

Chairman Rocco stated that the contract amount for the Information Security Risk Assessment is \$12,172. He then requested a motion to authorize the Chairman to enter into an agreement with Rea & Associates for an Information Security Risk Assessment in an amount not exceed \$12,172 for fiscal year 2023. Mr. Burks so moved and Mr. Bergman seconded. The Chairman asked if there were any questions or comments. Mr. Burks thanked the staff for looking into the risk assessment and said he felt it is important to do. Ms. Waggener said she has no doubt the risk assessment is important and asked if other proposals were solicited. Chairman Rocco said the discussions were only with Rea & Associates. Ms. Waggener said the amount is small enough that a request for proposal is not legally required, but at \$12,000, it would be nice to know if the Board is getting the best price for what is proposed to be done. The Chairman said when the cybersecurity issue came up, Rea & Associates was approached because of the good working relationship the staff has had with the company through the audit work over the past several years. He said he and Executive Director, Starr Richmond, felt more comfortable going with a company they knew and were familiar with. Mr. Ridi expressed that he is in favor of having the assessment done and mentioned that some security issues with financial transactions could be dealt with by using tokens and having the bank put some restrictions in place. Mr. Stephenson said from his experience, \$12,000 is a drop in the bucket compared to what can happen and agreed that working with a firm that is familiar with the Board and already has access to information is the right way to go. After some further discussion, a vote was taken and all voted in favor. The motion passed.

Actuary Contract

Chairman Rocco called on Mr. Leasor to discuss the actuary contract. Mr. Leasor said the staff is

proposing to use Milliman Inc. to prepare the estimated unpaid claims liability for fiscal year 2022. He explained that, starting with the fiscal year 2018 audit, Milliman has been used to evaluate the claims that were on hold due to litigation, and develop an estimate of the unpaid claims liability for that group; while he developed the estimate for all other claims. He said the combined totals provided the total estimated unpaid claims liability. He said under the proposed contract, Milliman will perform the entire actuarial evaluation and prepare the report for the Board resulting in significant time savings for the staff. He said the amount of the estimated unpaid claim liability provided by Milliman will be incorporated into the year-end financial statements presented to the auditors. He stated that Milliman's estimated range of fees for the contract is between \$35,000 and \$41,000 plus travel and related fees. He noted that the amount includes one-time costs to build the model used to evaluate all claims submitted to the Fund. He mentioned that Milliman will likely continue to perform the actuarial evaluations, and the costs will be slightly lower in future years.

Chairman Rocco said one of the reason for having Milliman perform the entire actuarial evaluation is to address internal staff workload and to allow for some of Mr. Leasor's time to be used for other purposes. In addition, it has been quite some time since an outside party has looked at the whole process. Mr. Leasor commented that the last time an outside firm performed the entire estimate was in 2007. Vice-Chairman Hull asked if Milliman will bring a new statistical actuarial approach to develop the estimate or if they will replicating the same customized software that has been used to develop the estimate in house. Mr. Leasor said his understanding is Milliman will use their proprietary software but use the same actuarial methodology used in the past to develop the estimate. The Chairman asked if there were any other questions concerning the proposed contract and there were none. He then requested a motion to authorize the Chairman to enter into an agreement with Milliman, Inc. to assist the Fund in developing the potential claim liability as of June 30, 2022, in an amount not to exceed \$41,000 plus travel and related fees. Mr. Ridi so moved and Mr. Fleming seconded. A vote was taken and all were in favor. The motion passed.

Hearing Officer's Contract Renewal

Mr. Leasor said Mr. Silver has agreed to continue as the Board's hearing officer for the next fiscal year and under the same contract terms as fiscal year 2022. He said those terms include an hourly rate of \$150; a minimum of five hours during the term of the agreement, but Mr. Silver is not bound to supply more than 300 hours; and a maximum of \$3,410 per appeal, unless otherwise agreed.

In response to questions from the Chairman, Mr. Leasor stated that no appeal hearings were held during the pandemic but there are appeals set to proceed to hearings. Vice-Chairman Hull recommended moving forward with renewal of the contract with Mr. Silver and the Chairman 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, 2022 through June 30, 2023. Mr. Bryant so moved and Vice-Chairman Hull seconded. A vote was taken and all were in favor. The motion passed.

Assistant Attorney General Memorandum of Understanding

Mr. Leasor stated that the fiscal year 2023 Memorandum of Understanding for the services of an Assistant Attorney General includes 45% of the Assistant Attorney General's salary and fringe benefits; 35% of a paralegal's salary and fringe benefits; and 20.4% for indirect costs related to support services, such as telephone, supplies, and office space. He noted that the agreement includes a clause

that if the Attorney General's actual direct and indirect costs exceed the stated not-to-exceed amount, the parties will further negotiate, and any adjustments will be incorporated into a written amendment to the Memorandum of Understanding.

Chairman Rocco said the agreement is essentially the same as it has been in the past with the only change being the amount, which he stated is not to exceed \$98,330. He asked if there were any questions about the agreement and there were none. He then requested a motion to authorize the Chairman to enter into an agreement with the Attorney General's Office for the continuation of legal services in an amount not to exceed \$98,330 for fiscal year 2023. Vice-Chairman Hull so moved and Mr. Burks seconded. A vote was taken and all were in favor. The motion passed.

Database Consultant Contract

Mr. Leasor said the Board's database is used for managing tank owners' accounts, tracking and processing claims, and preparing the monthly financial statements. He explained that the Board has historically executed a maintenance contract with a monthly retainer so that any glitches, defects, and expansion of the database can be addressed without delay. He noted that the contract includes assistance with the annual fee statement and claim liability processes; alteration of existing reports and creation of new reports, as needed; specialized SQL queries to retrieve data; and database updates required due to changes in procedures.

Chairman Rocco asked if there were any questions concerning the contract and there were none. He 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 2023. Vice-Chairman Hull so moved and Mr. Ridi seconded. A vote was taken and all were in favor. The motion passed.

Fee Statement Statistics

Mr. Leasor stated that the program year 2022 fee statements were issued on April 28, 2022, and about \$8.3 million was invoiced to 3,163 owners of 20,659 USTs. He said as of May 31, 2022, the per-tank fees collected were approximately \$2.86 million, which represents 35% of the amount billed. He pointed out that collections for the same period in the previous year were \$2.36 million. He noted that the program year 2022 fees collected to date are approximately \$500,000 above the payments received during the same period in the prior year.

Mr. Leasor said between the fee statement mailing in April 2021 and May 31, 2022, about \$8.34 million was collected for program year 2021 fees, and \$305,000 was collected for prior years' fees net of any refunds paid.

Mr. Leasor reported for program year 2022, a total of 15,380 tanks were billed at the standard deductible (\$55,000) per-tank fee and about 5,280 tanks were billed at the reduced deductible (\$11,000) per-tank fee. He said as of May 31, 2022, fees had been paid at the standard deductible rate for 4,650 tanks and at the reduced deductible amount for about 2,250 tanks. He said, in total, fees had been paid for 6,902 tanks by 1,262 owners. He said this compares to fees being paid for 5,556 tanks by 1,161 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 24% and the number of owners that had paid increased by 8.7%.

Mr. Leasor reported, as of May 31, 2022, the program year 2021 fees were paid for a total of 20,240 tanks by 3,047 owners.

Mr. Leasor said the \$2.86 million collected to date is 34% of the \$8.4 million budgeted for program year 2022. He said the 6,902 tanks with fees paid for program year 2022, is 34.2% of the 20,180 tanks budgeted to apply for certificates this year.

Compliance and Fee Assessment Report:

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

Ms. Esquivel reported that refunds totaling \$31,081 had been paid to 37 owners since July 1, 2021. She said the amount of pending refunds currently totals \$1,524,987. She said \$4,250 of pending refunds had been used to offset outstanding fees this program year. She said since July 1, 2021, the fees collected by the Attorney General's Office and Special Counsel less collection costs totaled \$119,660. She reported that, since July 1, 2021, outstanding fees for 248 accounts totaling \$1,091,500 had been certified to the Attorney General's Office for collection. She commented that this amount includes the program year 2021 fees that were unpaid at the time of the certification.

Ms. Esquivel said five Orders Pursuant to Law are currently under appeal and information to support those appeals is expected. She said four Determinations to Deny a Certificate of Coverage were under appeal and information to support one appeal is expected. She said additional information provided is under review for three appeals.

Ms. Esquivel stated that no Ability to Pay Applications are pending review. The Ability to Pay program allows former UST owners experiencing financial difficulty to apply for and receive a determination of their ability to pay delinquent fees.

Ms. Esquivel reported that, as of June 1, 2022, Certificates of Coverage had been issued to 2,918 owners for program year 2021. She said there are 91 Applications for Certificates of Coverage currently being processed. She said for program year 2021, there are 27 owners with unresolved Pending Denials and 83 owners with unresolved Determinations to Deny a Certificate of Coverage.

Ms. Esquivel stated that there are 25 uncashed refund checks totaling \$25,238. She said there are 15 owners with pending refunds totaling \$86,135 to whom more information request letters had been sent notifying them that additional information is needed before the refund may be issued. She said there are 37 owners with pending refunds totaling \$69,165 for which information had been requested, but no responses have been received.

Claims Reports:

Chairman Rocco called on Hannah Brame, Claims Supervisor, to present the claims reports.

Ms. Brame reported, as of June 1, 2022, the total maximum liability of in-house open claims is approximately \$8.83 million. She said using the claim payout ratio of 78%, which is the average ratio

over the past five years, the anticipated payout of unpaid in-house claims is about \$6.89 million.

Ms. Brame reported, as of June 1, 2022, a total of 498 claims with face values above the deductible amount were pending review and noted the claims staff are currently reviewing claims received prior to January 2022, as well as claims from Truenorth and Valero/Premcor for which review had previously been suspended due to anticipated litigation. Ms. Brame reported, as of June 1, 2022, a total of 20 claim determinations were under appeal. She explained that these appeals pertain to only three release sites, as there are multiple appeals for each of those sites. She noted that the staff is waiting for information to support 16 of the appealed determinations, additional information provided is under review for two appeals, and settlement addenda had been issued for two appeals.

Ms. Brame stated that, as of June 1, 2022, a total of 476 claim packages were received and a total of 550 claim determinations were issued this program year. She noted that no payment could be issued for 25 of these claims as the total face values were below the deductible amounts and the releases had received NFA status. She said the average payout per claim application this program year is \$12,778 and the average claim payout is 81.3% of the net claim value (face value – deductible). She noted that on average 14.9% of the claim face value is disallowed as non-reimbursable.

Ms. Brame reported, so far for program year 2021, a total of 71 eligibility applications were received and 86 eligibility determinations were issued. She said of these eligibility determinations, 66 were approved and 20 were denied. She said the reasons for denial included three for no release demonstrated, six for late filing of the eligibility application, two for lack of a valid Certificate of Coverage, three for abandoned or out-of-compliance tanks, and six for no corrective action required by BUSTR. She said as of June 1, 2022, a total of 102 eligibility applications were open. She noted that 15 applications were unreviewable until the necessary reports are received and more information has been requested for five applications. She also noted that, as of June 1, 2022, seven eligibility determinations were under appeal. She said additional information is expected for one appeal, information for four appeals has been received and is under review, and hearings were scheduled for two eligibility appeals.

Ms. Brame reported, as of June 1, 2022, a total of 105 cost pre-approval requests were received. She said the cost pre-approval requests include 26 requests for new remedial action plans; 36 requests for annual costs for remedial action plans or free product recovery; six requests for an interim response action requiring BUSTR approval; 14 requests for either Tier 3 or monitoring/calibration plans; 17 cost exceedance notifications; and six voluntary requests for cost pre-approval. She said as of June 1, 2022, a total of 94 cost pre-approval notifications had been issued and 42 cost pre-approval requests were pending review. She noted that since June 1, 2022, eight more cost pre-approval notifications had been issued.

Rules Committee Report:

Chairman Rocco stated that the Rules Committee met prior to the Board meeting and reminded members of the Board's proposed changes to rule 3737-1-04 concerning the issuance of a Certificate of Coverage. He explained that one issue the Committee was trying to address concerned tank installations and he mentioned that there was at least one situation where a release occurred from a

newly installed tank and there was no Fund coverage for the release because a Certificate had not been applied for. He noted that a tank is considered to be in service as soon as product is put in, and under the rules, financial responsibility is required for it.

Chairman Rocco said the Committee proposed to amend the rule to require a Certificate of Coverage at the point a tank is installed. He said the Ohio Energy and Convenience Association (OECA), the successor to the Ohio Petroleum Marketers and Convenience Association, filed comments on the proposed rule in which they indicated that requiring a Certificate of Coverage to be issued prior to product being put into the tank could be outside of the Board's authority. He said the Committee and the attorney representing OECA discussed the rule, and the committee plans to review the rule again and work with OECA to come to an agreement on how best to address the issue. He noted that there is not a disagreement about what the Committee is trying to accomplish, but there is a question whether the rule, as currently written, might have unintended results.

Chairman Rocco said once the Committee works through the revisions with OECA, the plan is to bring the rule back to the Board to address at its November meeting, which is also when the Board will be considering the annual fee and deductible amounts for the next year.

New Business:

Personnel Compensation

Chairman Rocco stated that as was mentioned during the presentation of the financial reports, the Board's employees are being given a 3% salary increase. He explained that the salary of the Board's Executive Director, Starr Richmond, requires Board approval and he requested a motion to approve a 3% salary increase for Starr Richmond, with an effective date of June 19, 2022. Vice-Chairman Hull so moved and Mr. Ridi seconded. A vote was taken and all members were in favor. The motion passed.

Certificates of Coverage – Ratifications:

Chairman Rocco called on Madelin Esquivel, Assistant Director, to present the lists of owners who have either been issued or denied a Certificate of Coverage for ratification by the Board.

Ms. Esquivel 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; 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. She said if a Certificate has not been issued in one of the prior two years and the tanks existed during those years, the owner must comply with rule 3737-1-04.1 by demonstrating the tanks are in compliance with the Fire Marshal's rules for the operation and maintenance of USTs.

Ms. Esquivel stated that, if the requirements are met, a Certificate is issued. She said if the requirements are not met, the Certificate is denied. She explained that if the Certificate is denied, the owner is provided with an opportunity to appeal the denial. She said that, throughout the denial process, the Board's staff works closely with the owner to resolve any deficiencies. She stated that all processes

within the Board's rules and Revised Code were followed to make a determination to issue or deny the Certificates of Coverage.

Ms. Esquivel requested the Board ratify the Director's actions with respect to the issuance of the program year 2020 Certificates of Coverage for the nine owners of the [30] facilities included on the program year 2020 Certificates issued list.

Vice-Chairman Hull moved to ratify the issuance of the 2020 Certificates of Coverage for the facilities listed. Mr. Fleming seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Esquivel requested the Board ratify the Director's actions with respect to the denial of the program year 2020 Certificates of Coverage for the eight tanks located at the three facilities included on the program year 2020 Certificates denied list.

Vice-Chairman Hull moved to ratify the denial of the 2020 Certificates of Coverage that were listed. Mr. Ridi seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Esquivel requested the Board ratify the Director's actions with respect to the issuance of the program year 2021 Certificates of Coverage for the 129 owners of the 741 facilities included on the program year 2021 Certificates issued list.

Vice-Chairman Hull moved to ratify the issuance of the 2021 Certificates of Coverage for the facilities listed. Mr. Ridi seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Esquivel requested the Board ratify the Director's actions with respect to the denial of the program year 2021 Certificates of Coverage for the 117 tanks located at the 43 facilities included on the program year 2021 Certificates denied list.

Vice-Chairman Hull moved to ratify the denial of the 2021 Certificates of Coverage that were listed. Mr. Ridi seconded. A vote was taken and the motion passed. Mr. King was not present for the vote.

Executive Session:

Chairman Rocco stated that an executive session was needed and requested a motion to enter into executive session with counsel pursuant to Ohio Revised Code 121.22(G)(3) to discuss matters of pending or imminent court action. Mr. Burks so moved and Mr. Bergman seconded. The Chairman called for a roll call. The following members voted in the affirmative: Ms. Waggner and Messrs. Bergman, Bryant, Burks, Fleming, Hull, Ridi, Stevenson, Lenzo, and Rocco. Mr. King was not present for the vote. There were no nays. The motion passed.

The Chairman then briefly explained the process for the Board to privately participate in the executive session using ZOOM. The Chairman stated that the public meeting would reconvene following the executive session. Messrs. Fleming and King did not participate in the executive session.

Reconvene Meeting

The Board adjourned from the executive session and reconvened the public meeting. Messrs. Fleming and King were no longer present at the meeting.

Confirm Next Meeting and Adjourn:

Chairman Rocco said the next Board meeting will be held on Wednesday, September 14, 2022, at 10:00 a.m.

Mr. Bergman made a motion to adjourn the meeting and Vice-Chairman Hull seconded. All members were in favor.

Note: Numbers in brackets [] were incorrectly stated at the meeting. The numbers as written reflect the correct numbers from the report materials provided at the meeting.