



Petroleum Underground Storage Tank Release Compensation Board

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MINUTES OF THE 136th MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD March 9, 2011

BOARD MEMBERS IN ATTENDANCE

Jim Rocco, John Hull, Duane Cable, Brian Epperson, Steve Hightower, Cheryl Hilvert, Don Kuchta

EX-OFFICIO MEMBERS IN ATTENDANCE

Verne Ord, representing Director David Goodman, Ohio Department of Commerce
Chris Geyer, representing Director Scott J. Nally, Ohio Environmental Protection Agency
Bill Bishilany, representing Ohio Treasurer, Josh Mandel

OTHERS IN ATTENDANCE

Starr Richmond	Executive Director, PUSTRCB
Don Leasor	Chief Fiscal Officer, PUSTRCB
Madelin Esquivel	Assistant Director, PUSTRCB
Cindy Duann	Environmental Claims Supervisor, PUSTRCB
Ellen Mitton	Administrative Coordinator, PUSTRCB
Homayoun Sharifi	Environmental Claims Analyst, PUSTRCB
Michael Grube	Environmental Claims Analyst, PUSTRCB
Rick Trippel	Environmental Claims Analyst, PUSTRCB
Krista Nichols	Accounts Receivable Specialist, PUSTRCB
Cindy Knight	Compliance Analyst, PUSTRCB
Mary Jo McKenzie	Claims Coordinator, PUSTRCB
Cheryl Hawkinson	Assistant Attorney General
David Biemel	OPMCA
Howard D. Silver	Hearing Officer
Michael Koss	ATC Associates
Doug Darrah	ATC Associates
Eric Swaisgood	Speedway, LLC
Dan Griest	Speedway, LLC
Frank Reed	Frost Brown Todd LLC
Lisa Withey	Michigan Consulting & Environmental
David Yost	Michigan Consulting & Environmental
Joe Hagenbarth	Toledo 76, Inc.
Mike Byrne	Sunoco, Inc.
Yvonne Monti	Sunoco, Inc.

Minutes submitted by:

Ellen S. Mitton
Administrative Coordinator

Call To Order:

Chairman Rocco convened the one hundred thirty-sixth meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, March 9, 2011. The following members were in attendance: Jim Rocco; John Hull; Cheryl Hilvert; Steve Hightower; Duane Cable; Mayor Don Kuchta; Brian Epperson; Verne Ord, representing Director David Goodman, Ohio Department of Commerce; Bill Bishilany, representing Ohio Treasurer Josh Mandel; and, Christopher Geyer, representing Director Scott J. Nally, Ohio Environmental Protection Agency.

Chairman Rocco officially welcomed Cindy Knight, Verne Ord and Bill Bishilany to the Board. Ms. Knight was recently hired as the Compliance Analyst on the Board's staff. Mr. Ord has been appointed Acting Bureau Chief of the Bureau of Underground Storage Tank Regulations (BUSTR) and is representing Director Goodman of the Ohio Department of Commerce. Mr. Bishilany has been appointed by State Treasurer Josh Mandel to represent the Treasurer's office at the Board meetings.

Chairman Rocco asked if there were any comments, questions, or discussion regarding the minutes from the January board meeting and there were none. Mayor Kuchta moved to approve the minutes. Ms. Hilvert seconded the motion. A vote was taken and all members voted in the affirmative. The motion carried.

BUSTR Report:

Chairman Rocco called upon Verne Ord, Acting Bureau Chief, to present the BUSTR report.

Mr. Ord said the Domenici-Barton Energy Policy Act of 2005 requires states with authorized UST programs to promulgate rules addressing, among other things, UST-release prevention (secondary containment) and prohibitions on delivery of petroleum products to UST systems in violation of UST laws. Mr. Ord stated that BUSTR provided the proposed rules to stakeholders utilizing the Governor's "e-notification" process, as well as the Limited Report on Comments. Mr. Ord stated the Department of Commerce filed the rules with the Joint Committee on Agency Rule Review (JCARR) on November 24, 2010.

Mr. Ord said that on January 14, 2011, the Department of Commerce filed a "to be re-filed" letter with JCARR, which suspends JCARR's jurisdiction over the rules until the Department re-files the rules. He said this action was taken in order to address changes in the new administration and the JCARR membership, and to provide BUSTR and its stakeholders additional time to address general concerns regarding the rules. Mr. Ord stated a stakeholder meeting was held at BUSTR on February 23, 2011, and as a result of the meeting, adjustments were being made to some of the rules.

Mr. Ord said Ohio Administrative Code rule 1301:7-9-05 regarding financial responsibility was filed as a "No Change" rule with JCAAR on February 14, 2011, and BUSTR would revisit the rule during the five-year review process.

Mr. Ord said the Bureau is in the process of reviewing BUSTR rules to meet the five-year rule review requirement. He said BUSTR continues to work with the stakeholders on Ohio Administrative Code rule 1301:7-9-12 (Closure Assessment) and Ohio Administrative Code rule 1301:7-9-13 (Corrective Action). These rules, along with minor adjustments to other rules, will be filed at a later date.

Mr. Ord said BUSTR interviewed candidates to serve as supervisors to UST inspectors throughout the state. He said the two new supervisors would report to Steven Krichbaum, manager of the UST

section. Mr. Ord said the vacant Environmental Specialist 2 position had been posted and interview selection would be completed within 30 days.

Mr. Ord said Environmental Specialist 2, Dale Egner, had been temporarily assigned as project manager to the American Recovery & Reinvestment Act (ARRA) and would resume his Environmental Specialist duties once the ARRA program is completed.

Mr. Ord stated there are 22,434 USTs registered with BUSTR at this time. He said there are currently 3,952 owners of registered facilities, and he noted that 3,622 of these owners owned six or fewer tanks.

Mr. Ord said there had been 26,038 no further actions (NFAs) related to clean-ups issued within the BUSTR program.

Financial Report:

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

December & January Financials

Mr. Leasor stated the December and January financial statements were emailed to each member. He asked if there were any questions or concerns regarding these reports. Hearing none, Mr. Leasor began his report with the January financials.

Mr. Leasor said as of January 31 there was about \$4.7 million in the obligated account, which is set aside for fiscal year 2011 claim settlement payments. He said as of March 9 the amount in the obligated account is approximately \$4.2 million. Mr. Leasor said at the end of January the unobligated balance was about \$2.3 million; and, as of March 9 the unobligated balance is approximately \$2 million.

Mr. Leasor said the claims expense for January was approximately \$873,000. He said claims payments through January represent 37% of the \$9 million budgeted for claims; however, since only \$8 million had been obligated for claims payments, claims payments through January 31, 2011, represent 41.7% of the actual funds obligated. Mr. Leasor said from July 1, 2010 through March 9, 2011 there had been approximately \$3.9 million in claims reimbursements, which is 48.6% of the obligated \$8 million.

Mr. Leasor said approximately 99.3% of budgeted revenues had been collected as of January 31, 2011. He said as of March 7 approximately \$136,000 had been paid in refunds this fiscal year.

He said with the exception of the postage and the legal and professional line items, all other expenses are on target for this time of the fiscal year. Mr. Leasor said due to a staff vacancy, the temporary services line item would most likely be over budget; however, this will be offset with the salary line item being under budget.

Mr. Leasor said as of January 31 the postage line item is approximately 75.3% of the budgeted amount and is in line with prior years for the same time period.

Mr. Leasor said the legal and professional line item is approximately 87.2% of the amount budgeted and includes the fourth quarter of fiscal year 2010 and the first and second quarters of fiscal year 2011 costs associated with the services of the Assistant Attorney General; annual audit; claim liability study; I.T. consultant; and fees assessed by the Attorney General's Revenue Recovery Section as collection fees.

Mr. Leasor said that the collection costs paid by the Board were higher than anticipated due to fees paid to Special Counsel to collect delinquent Fund fees. Mr. Leasor said the Attorney General's Revenue Recovery fee is 10% of the amount collected and these costs are passed on to the owner or operator. He said the Special Counsel fees are 33 1/3% of the total fees collected and these costs are not passed on to the owner or operator. He said there is also a timing issue with accounts certified to Revenue Recovery that results in the Board paying the collection costs at the time an owner remits a payment, but the Board does not receive the owner's payment of these same collection costs until later in the collection process. Mr. Leasor stated from July 1, 2010 to date there had been \$69,800 paid in collection costs, net of collection costs paid by the owners.

Mr. Leasor stated that with respect to the I.T. consultant, the Board contracted in June 2010 with Mark Suttner for the fiscal year 2011 database and website maintenance. Mr. Leasor stated Mr. Suttner had recently accepted full-time employment elsewhere; and, the Board was currently searching for another I.T. consultant. Mr. Leasor said once there is a contract in place with a new I.T. consultant, it is anticipated there would be some transition costs in bringing the new consultant current with the project.

Mr. Leasor said additional unanticipated legal and professional costs are expected due to the fact that 100 plaintiffs had filed suit against an owner with third-party eligibility and it's anticipated the Board will share legal costs with several other defendants.

Mr. Leasor requested the 2011 legal and professional operating budget be amended due to the unexpected increases in this line item. Chairman Rocco requested the Audit Report and the Attorney General Certification Process be discussed prior to addressing the amendment to the budget.

Audit Report

Mr. Leasor indicated there were three binders from Schneider Downs, the Board's auditors, in the front of each Board member's book - the Financial Statements, the Auditor's Communication to Those Charged with Governance, and the Management Letter.

Mr. Leasor said that following the January 19, 2011 Board meeting, a request was approved to extend the deadline for the submission of the audit from January 31 to February 11, 2011. He stated Schneider Downs submitted the audit in compliance with the extended deadline. Mr. Leasor said the audit is subject to review and acceptance by the Auditor of State, but has not yet been released by the Auditor. Mr. Leasor said the auditors noted three items to be addressed by management. These comments to management were intended to improve internal control and operational efficiencies and are not reportable items as they do not impact the financial statements.

Mr. Leasor said first, the auditors suggested that all future adjustments for the allowance for doubtful accounts and collections of amounts previously written off be recorded as bad debt expense and recoveries of bad debts, respectively. He said this pertains to accounts determined to be uncollectible and how changes are recorded during the process of estimating accounts receivable at the end of the fiscal year. Mr. Leasor said this would be remedied this fiscal year during the process of estimating accounts receivable at year-end and the subject accounts would be recorded in a way that complies with the auditors' recommendation.

Mr. Leasor said the next two items identified in the management comments as issues of non-compliance are not financial statement issues, but rather relate to public information documentation within the office and access to personal information.

Mr. Leasor said the auditors noted that the Board was not in compliance with the state's Public Records Policy requiring every state agency to have an on-site posting of its Public Records Policy. Mr. Leasor said within five days of the auditors providing notification of the non-compliance, a document in compliance with the state's Public Records Policy was created and is now on display in the reception area of the Board's office.

Mr. Leasor said the final management comment addressed the lack of formal documentation governing the protection of, and access to, sensitive, personal information as it related to tank owners and operators. He stated a new rule regarding access and maintenance of confidential personal information was in draft form and had been presented to the Board's Rule Committee in a meeting on January 19, 2011 and would be presented to the Board at a future meeting.

Mr. Leasor stated the finding reported by the auditors in fiscal years 2007, 2008, and 2009, maintenance of a detailed accounts receivable ledger, was resolved in fiscal year 2010.

Mr. Leasor said that as part of the fiscal year 2010 audit, the auditors did report one internal control deficiency regarding financial reporting. The auditors recommended a formal policy be developed to include procedures governing the process and timing of the certification of delinquent accounts to the Attorney General's office for collection. Mr. Leasor said the end-of-year accounts receivable estimate relies heavily on the historical collection rates of accounts certified to the Attorney General's office. He said unpaid current year fees are certified to the Attorney General's office during the third quarter of each year. However, a formalized process for identifying and certifying accounts with delinquent prior years' fees has not yet been established. He said such a process is necessary to maintain a reasonable estimate of the allowance for uncollectible amounts. Mr. Leasor said management anticipates developing a policy to address this issue by the end of the current fiscal year.

Attorney General Certification Process

Chairman Rocco said the process regarding delinquent accounts should be addressed, noting there are some delinquent accounts going back almost twenty years. He said a time frame should be established regarding the appropriate time to write off delinquent accounts.

Chairman Rocco called on Ms. Madelin Esquivel, Assistant Director, to discuss the certification and the Attorney General's Revenue Recovery collection processes.

Ms. Esquivel said the Board certifies delinquent accounts to the Attorney General's Revenue Recovery Office a minimum of two times per year. She said the Attorney General's office aggressively pursues the tank owner/responsible person for payment of delinquent tank and late fees; and, the Board is charged a 10% collection fee for that service.

She said current year tank fees still unpaid as of the third quarter of the fiscal year are certified to the Attorney General's office in January, and at that time, the late fee is set to the maximum of \$1,000 per tank and the 10% Attorney General collection cost is assessed to the owner. She said, for example, this year between July 1 and January 1, there were over 300 unpaid current year fee accounts reviewed and 205 of those accounts were certified to the Attorney General's office on January 31. Ms. Esquivel said that throughout the rest of the year, when staff resources allow, a number of the remaining accounts with unpaid current year fees are reviewed and when reconciled for accurateness, are certified to the Attorney General's office in June.

Ms. Esquivel said the Attorney General's Revenue Recovery Office attempts to collect these accounts for four to six months. She said if no payments are received, the responsible person refuses to pay, or the responsible person is unable to pay, Revenue Recovery automatically assigns the account to a private attorney in the same geographical area as the responsible person. This attorney is referred to as Special Counsel and charges 33 1/3% for amounts collected up to \$25,000; a sliding scale is applied to amounts collected above \$25,000. Ms. Esquivel said the Special Counsel fee is in addition to the Attorney General's fee of 10%. She said of the total 43 1/3%, the Board does recoup the Attorney General's 10% collection fee from the responsible person; but the Board pays the Special Counsel fees of 33 1/3%.

Ms. Esquivel said based on previous Board action, Revenue Recovery and Special Counsel are given the authority to reduce the late fees to 20% of the total amount due, which includes both the per-tank and late payments fees; however, tank fees are not reduced.

Ms. Esquivel stated that during the Amnesty Program offered last year the late fee reduction was 5% rather than the typical 20% of the total amount due, which resulted in a significantly reduced account balance for the responsible person. She said not all responsible persons who responded to the Amnesty Program had been certified to Revenue Recovery for collection.

Ms. Esquivel said if Special Counsel's collection efforts are unsuccessful, the Attorney General's office may refer the account to the Value Recovery Group, which is an Ohio-based company specializing in the recovery of underperforming assets. The Value Recovery Group collection fee is 45% and the Attorney General's office charges an additional 5% collection fee. She added that the Board could also request the Attorney General's office to withhold the outstanding fees from the responsible person's state income tax return. Ms. Esquivel stated none of the Board's accounts had been referred to Value Recovery Group nor had any fees been withheld from state income tax returns.

Ms. Esquivel said that since the beginning of the certification process in 2000, the Board has certified over \$14 million to the Attorney General's office and, if uncollected by Revenue Recovery, the accounts were assigned to Special Counsel. She said the Attorney General's Revenue Recovery office and/or Special Counsel has collected \$2,054,000 of the \$14 million in past due fees. She said that in this fiscal year alone, Revenue Recovery has collected about \$247,700, which includes \$13,243 in collection fees paid by the responsible persons. The Board paid \$57,900 in Special Counsel's fees and \$11,935 in Revenue Recovery fees for the collection of this \$247,700. In the future, as owners continue to make payments, the Board may recover from the owners some or all of the \$11,935 in Revenue Recovery fees.

Ms. Esquivel said she would like to the Board to request the Attorney General's office to provide the Executive Director with a list of accounts set to go to Special Counsel prior to the accounts being assigned to Special Counsel. This would help to alleviate the Board paying unnecessary fees in instances where the staff has continued to work with the responsible person and may have ultimately been successful in collecting the debt. She said the Executive Director or designee could then review and select the accounts that should be assigned to Special Counsel.

Ms. Esquivel said Ms. Richmond, Executive Director, and Mr. Leasor, Chief Fiscal Officer, are in the process of developing an "inability to pay process" where the financial position of the responsible person would be evaluated, which is a process similar to determining a hardship application for claims reimbursements. She said if the tanks are removed and the responsible person demonstrates an inability to pay, the outstanding fees would be written off and no further collection efforts would be taken.

Ms. Esquivel stated currently there is \$14.7 million in outstanding past years' fees. She said the staff continues to resolve accounts with prior years' outstanding fees; however, due to limited staff resources some accounts are delayed or not certified to the Attorney General's office. She stated many accounts are currently being reconciled, but it is a lengthy process and the staff encounters many obstacles in the reconciliation process; for example, some accounts may have installation and/or removal issues; some may have refunds pending that will offset the outstanding fees; or some may be lacking a valid address at which to contact the responsible person.

Ms. Esquivel said in preparation for developing a policy to comply with the auditor's recommendation and to resolve some of the issues involved with Special Counsel collection fees, she requests the Board members to consider:

- 1) authorizing the Director or her designee to determine which accounts are to be assigned to Special Counsel for collection;
- 2) authorizing passing the Special Counsel fee to the responsible person when appropriate, allowing the Board to recoup 100% of the collection fees;
- 3) giving the Director or her designee authorization to determine which accounts are to be forwarded to the Value Recovery Group after Special Counsel exhausts all collection efforts and to pass the Value Recovery Group collection fee to the responsible person;
- 4) whether outstanding fees should be withheld from the responsible person's state income tax returns; and
- 5) setting a specific time period for "writing off" all tank fees for inactive owners when the tanks have been removed.

In response to Mr. Bishilany's question, Ms. Esquivel confirmed that a tank owner could establish a payment plan; however, if the owner defaults on the plan and does not re-establish the payment plan within sixty days, the account is assigned to Special Counsel.

Following an in-depth discussion, Chairman Rocco proposed that a policy be prepared and presented to the Board; the policy should incorporate the suggestions from the Board's discussion today.

Vice Chairman Hull moved to require any decision for an account to go to Special Counsel from the Attorney General's office for collection purposes must be approved by the Director of the Financial Assurance Fund before moving forward with that step in the collection process. Mr. Bishilany seconded the motion. A vote was taken and all members voted in the affirmative. The motion carried.

Ms. Richmond requested a committee be appointed to review and provide feedback on a proposed policy. Chairman Rocco said the Finance Committee would be available to assist in the process. He stated a more detailed procedure would be prepared and would include the pros and cons of each recommendation and the financial impact of the recommendations presented to the Board.

Mayor Kuchta inquired how the outstanding accounts accumulate; as it was his understanding that product could not be delivered if the owner was not in compliance. Chairman Rocco replied that a number of sites are no longer active sites, and many were not brought to the Board's attention until the tanks were removed. He said, in the future, under the Energy Act, BUSTR would have the ability to physically shut down a tank if it is not in compliance with specific criteria, including financial assurance. Chairman Rocco stated that the unpaid fees would need reviewed to determine what constitutes the outstanding fees and the likelihood of recovering portions of the outstanding fees.

Chairman Rocco requested that future financial reports to the Board provide detail on the Attorney General's collection costs charged to the Board and the amount of collection costs paid by the owner/operators. The intent is the report would indicate the amount collected through the Attorney General's office, the cost of collecting the outstanding fees, and the amount received from owners for the payment of the collection costs. Mr. Rocco stated that the items would allow the Board to track the outstanding fees collected, the costs of collection, and the amount of the collection costs recovered from owners.

Chairman Rocco said that earlier in the meeting the Board had been requested to amend the fiscal year 2011 operating budget in anticipation of the unexpected expenses regarding a third-party eligibility claim, replacement costs for the I.T. consultant, and the higher than anticipated collection costs. Chairman Rocco stated that the amount expended for Legal and Professional expenses is close to exceeding the amount budgeted and the Special Counsel fees totaling \$57,000 are a contributing factor.

Mr. Hightower moved to amend the fiscal year 2011 operating budget to increase the legal and professional line item by \$30,000 to a total of \$225,000, which will increase the total budgeted expense for fiscal year 2011 to \$1,647,198. Mr. Bishilany seconded. Prior to calling for the vote, there was a discussion as to whether \$30,000 would be sufficient to cover the anticipated expenses. Mr. Hull moved to increase the legal and professional line item by an additional \$10,000, raising the total increase to \$40,000. Mr. Cable seconded. A vote was taken and all members voted in the affirmative. The motion for the amendment carried.

Chairman Rocco said there is a motion on the floor to amend the fiscal year 2011 operating budget to increase the legal and professional line item by \$40,000 to a total of \$235,000, which will increase the total budgeted expense for fiscal year 2011 to \$1,657,198. A vote was taken and all members voted in the affirmative. The motion carried.

Claims Report:

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

Ms. Duann said there is good news to report. She said that during the last two months the claims staff settled more claims than were received, and, as a result, the key numbers reported in the claims statistics are going down.

Ms. Duann said the current total maximum liability of the in-house open claims is down almost 4% from \$28.6 million to approximately \$27.5 million. She added that the total number of in-house open claims is down 2% from 1,622 to 1,587. Ms. Duann said there are currently 26 claims under appeal, which is down 16% from the 31 appeals on the last report.

Ms. Duann said that in January the Board received 45 claim packages and settled 58 claims. She said that in February the Board received 61 claim packages and settled a record monthly high of 70 claims. Ms. Duann said the settlement amount offered from July 2010 through February 2011 totaled approximately \$4.2 million, making the average claim payout 67.7% of the net value. She anticipates a total claim settlement offer of approximately \$6.5-\$7 million this program year.

Ms. Duann said the Board received two eligibility applications in January and determined three eligibility applications. She said the Board received only one eligibility application in February and 11

had been determined. Ms. Duann said in comparison to the past seven years, the Board is receiving less than half of the number of eligibility applications historically received. She said currently there are 11 open eligibility applications to be determined.

Ms. Duann said that during the past eight months the Board received a monthly average of 14 requests for cost pre-approval and issued an average of 19 cost pre-approval notifications per month. Ms. Duann said there are currently 68 cost pre-approval applications in-house to be reviewed, which is down 9% from the last report.

New Business

Appeal Hearings

1) Claim #10657-0001/09/18/07-A, Toledo 76, Inc., Joe Hagenbarth

Mr. Silver stated that Toledo 76, Inc. is the owner of the property located at 106 North Union Street in Bryan, Ohio, for which Toledo 76, Inc. possessed a valid Certificate of Coverage at the time of the release.

Mr. Silver said that on September 18, 2007, Toledo 76, Inc. reported to the Bureau of Underground Storage Tank Regulations (BUSTR) a suspected release at the site and the release was confirmed on September 26, 2007.

Mr. Silver said that from December 18 through December 20, 2007, Toledo 76, Inc. removed six underground storage tanks (USTs) from the site, as well as the piping and pumps. He said that on June 30, 2008, Toledo 76, Inc. filed with BUSTR an UST Closure Assessment Report that included data from laboratory analyses of soil and ground water samples that indicated petroleum contamination at the site exceeded action levels. Mr. Silver said that beginning on July 8, 2008 and continuing through July 15, 2008, Toledo 76, Inc. excavated 3,359.24 tons of soil from the site and disposed of this soil at a local landfill.

Mr. Silver said that on January 15, 2009, Toledo 76, Inc. filed a claim for reimbursement of \$224,078.36 for costs associated with the soil removal and disposal that occurred in July 2008. Mr. Silver said that on January 15, 2010, the Director of the Financial Assurance Fund (Fund) issued a claim settlement determination denying the claim on the grounds that Toledo 76, Inc. had not secured authorization from the State Fire Marshal prior to excavating and disposing of the soil from the site and therefore, the costs from this work were precluded from reimbursement by Ohio Revised Code section 3737.92(B)(2).

Mr. Silver stated that Toledo 76, Inc. argued in the appeal proceeding that the information provided in the June 30, 2008, UST Closure Assessment Report contained more information than would have been received had a Tier 1 Delineation Notification, Tier 1 Investigation Report, or an Interim Response Action been filed prior to July 8, 2008. He said Toledo 76, Inc. claimed that it had carried out appropriate corrective action in substantial compliance with the State Fire Marshal's rules, and that its claim should be approved for reimbursement.

Mr. Silver said to secure reimbursement under an Interim Response Action, an owner/operator of a site must submit a Tier 1 Delineation Notification and a Tier 1 Investigation Report to BUSTR and BUSTR must approve the Tier 1 Investigation Report. Mr. Silver stated that no such reports had been submitted to BUSTR prior to the excavation of the soil. He stated that Toledo 76, Inc. also had not

received approval from BUSTR of the Tier 1 Investigation Report prior to performing the corrective action work.

Mr. Silver said due to insufficient compliance by Toledo 76, Inc. with the State Fire Marshal's corrective action rule, Ohio Administrative Code section 1301:7-9-13, the corrective action had been performed without authorization and therefore, the cost for the work was properly precluded from reimbursement by the Fund. Mr. Silver said he finds that the denial of claim reimbursement from the Petroleum UST Financial Assurance Fund by the Director of the Fund comprises valid state action as a matter of fact and law, and he recommended that the denial be upheld.

Chairman Rocco recognized representatives from Toledo 76, Inc. and their attorney, Mr. Frank Reed, and asked if anyone would like to comment. Mr. Reed introduced the representatives from Toledo 76, Inc. and Michigan Consulting & Environmental. Mr. Reed stated Toledo 76, Inc. objects to the Report and Recommendation and the hearing officer's recommendation to affirm the denial of the reimbursement. He said, in summary, the reimbursement claim of Toledo 76, Inc. should be reversed or modified because they believe that the corrective action to remove contaminated soil was necessary and the evidence is uncontroverted that the soil was above Tier 1 action levels. He stated the Bureau of Underground Storage Tank Regulations had prior notice of the soil investigation in writing and verbal notice of the proposed soil removal; and, the claim for reimbursement for \$224,078.36 at most, should have been reduced by 50% for failure to seek cost pre-approval. Mr. Reed asked that the Board modify or reverse the Report and Recommendation.

Chairman Rocco recognized Ms. Hawkinson, Assistant Attorney General, to respond. Ms. Hawkinson stated that the important issue is that Toledo 76, Inc. did not comply with the Board's statute, which says the Fund can reimburse for corrective action work completed only if the clean up is done in accordance with the State Fire Marshal's rules. She said this is not a rule issue; it is a statute issue. Ms. Hawkinson recommended the Board affirm the hearing officer's recommendation.

Following a lengthy discussion, Mr. Hightower moved to go into a closed meeting for deliberations. Mayor Kuchta seconded and a roll call vote followed. The following members voted in the affirmative: Messrs. Rocco, Cable, Epperson, Hightower, Kuchta, Ord, Bishilany, Geyer, and Ms. Hilvert. Mr. Hull abstained. There were no nays and the motion passed.

The Board adjourned from private deliberations and Chairman Rocco reconvened the public meeting.

Ms. Hilvert moved to adopt the findings of facts, conclusions of law, and the recommendation of the hearing officer to uphold the Director's denial of claim reimbursement to Toledo 76, Inc. Mr. Cable seconded. A roll call vote followed. The following members voted in the affirmative: Messrs. Rocco, Cable, Epperson, Ord, Bishilany, and Ms. Hilvert. The following members voted nay: Messrs. Hightower, Kuchta and Geyer. Mr. Hull abstained. The motion passed.

2) Claim #17911-0001/12/17/97-E, TNT Pit Stop, Mike Cline

Mr. Silver said TNT Pit Stop is a convenience store located at 28451 State Route 7 in Middleport, Ohio. He said Mike Cline and family have owned the business since 1995.

Mr. Silver said that in December 1997 four underground storage tanks (USTs) were removed from the facility, and on December 17, 1997 a petroleum release had been confirmed following the removal of these tanks.

Mr. Silver said that on February 16, 1999 the Fund determined that TNT Pit Stop was eligible for reimbursement under the Fund. He said TNT Pit Stop submitted five claims to the Fund and four of the claims had been approved and settled by the Fund between June 29, 2001 and February 28, 2006. Mr. Silver said the fifth claim for reimbursement, claim number 17911-0001/12/17/97-E, was filed with the Fund on February 26, 2009 for costs associated with Tier 1 Source Investigation activities and the preparation of a Tier 1 Delineation Notification report.

Mr. Silver said that on August 17, 2004, BUSTR requested additional information from TNT Pit Stop regarding quarterly monitoring reports. He said on November 18, 2004 a Tier 2 Evaluation Addendum report was submitted to BUSTR presenting the information that had been requested in the August 17, 2004 letter.

Mr. Silver stated by January 23, 2006 TNT Pit Stop had not received any response from BUSTR as to the report that had been submitted on November 18, 2004. He said BUSTR sent a letter to TNT Pit Stop dated January 23, 2006 stating that Ohio Administrative Code rule 1301:7-9-13 had been revised and that revision became effective March 1, 2005. He went on to say the letter from BUSTR also stated the revised rule grants a period of one year for the responsible parties to either complete the cleanup under the March 31, 1999 rule, or a responsible party could ask BUSTR for an extension of time to complete the cleanup, or the release would automatically be regulated under the 2005 rule and different cleanup requirements would apply. Mr. Silver said the letter indicated a written request for such an extension of time had to be filed with BUSTR by March 1, 2006.

Mr. Silver said TNT Pit Stop sent a written request to BUSTR on February 13, 2006 asking that the release remain under the 1999 corrective action rule and also indicated TNT Pit Stop was still awaiting a response from BUSTR to the Tier 2 Evaluation Addendum report that had been submitted in November 2004. He stated BUSTR made no response to the February 13, 2006 request from TNT Pit Stop to remain under the 1999 corrective action rule.

Mr. Silver said TNT Pit Stop received correspondence from BUSTR dated March 29, 2007 stating that the release had been moved under the 2005 corrective action rules, and that TNT Pit Stop was required to conduct a Tier 1 Source Investigation and to submit either a Tier 1 Evaluation or a Tier 1 Delineation Notification report on or before June 29, 2007.

Mr. Silver said TNT Pit Stop did not submit a Tier 1 Evaluation or a Tier 1 Delineation Notification report to the State Fire Marshal by June 29, 2007. He said TNT Pit Stop filed its Tier 1 Delineation Notification report on March 29, 2008. Mr. Silver said that on April 9, 2008 BUSTR received a written request for an extension of time to submit the Tier 1 Delineation Notification report, which had been due by June 29, 2007. Mr. Silver said that on April 15, 2008 BUSTR denied the extension of time because the request for the extension had been submitted after the June 29, 2007 deadline.

Mr. Silver said the Director of the Fund informed TNT Pit Stop in correspondence dated April 16, 2010, that because the Tier 1 Delineation Notification report had been due by June 29, 2007 as ordered by BUSTR, a claim for reimbursement for costs associated with that report were required to be submitted within one year of the June 29, 2007 due date, that is, by June 29, 2008. Mr. Silver said the TNT Pit Stop claim for reimbursement had been submitted on February 26, 2009, and the Director found the claim untimely filed and refused the claim in its entirety pursuant to Ohio Administrative Code sections 3737-1-09(A)(11) and 3737-1-12(D)(3).

Mr. Silver stated based on the findings of fact and conclusions of law presented, he recommended that the members of the Board uphold the Director's denial of claim reimbursement.

Chairman Rocco requested a motion to adopt the findings of fact, conclusions of law, and the recommendation of the hearing officer to uphold the Director's denial of claim reimbursement to TNT Pit Stop. Mayor Kuchta so moved. Mr. Bishilany seconded and a vote followed. All members voted in the affirmative. The motion passed.

Hardship Application

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

Ms. Richmond said Mr. Allen Frank, owner of Amanda Carryout Inc., requests the Board grant hardship status to the carryout for the reimbursement of claims related to a 2008 petroleum release on East Main Street in Amanda, Ohio. She said this is the carryout's second request for hardship status and, if granted, will be effective for one year. At that time, Mr. Frank may reapply. The previous hardship status expired on June 9, 2010. Ms. Richmond said to date the Fund had reimbursed Amanda Carryout Inc. slightly over \$13,000. She said there is one unsettled claim package with a face value of just under \$28,000 in-house.

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

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

Rules Discussion

Chairman Rocco said the Board previously had discussed modifications needed to some of the Board's rules. He stated the Rule Committee had met; however, it had been determined there was not an immediate need to address any particular rule. He said once BUSTR had re-filed its rules, it very likely would be necessary to address some of the Board's rules. Chairman Rocco said since the Board is not currently facing a filing deadline, he recommended postponing any rule discussions until the September Board meeting, which is the first meeting of the new fiscal year.

Certificates of Coverage Ratification

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

Ms. Richmond said that behind Tab 9 there is a listing of facilities issued a program year 2009 Certificate of Coverage, and behind the blue divider page, a listing of facilities denied a program year 2009 Certificate of Coverage since the January Board meeting.

Ms. Richmond said the process used to review the fee applications and issue or deny a 2009 Certificate of Coverage included a review for completeness to determine that full payment had been made, financial responsibility was demonstrated, and BUSTR registration was complete. In a second level of review, BUSTR registration data was considered to determine whether tanks for which coverage is sought are in compliance with BUSTR's rules. Ms. Richmond said if there are no issues, the facility receives a Certificate of Coverage.

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

Ms. Richmond asked the Board to ratify her actions with respect to the two facilities receiving 2009 Certificates of Coverage.

Mr. Hull moved to ratify the list of 2009 Certificates of Coverage that were granted. Mr. Cable seconded. A vote was taken and all of the members were in favor. The motion passed.

Ms. Richmond asked the Board to ratify her actions with respect to the 34 facilities that were denied a Certificate of Coverage for program year 2009.

Mr. Hull moved to ratify the list of 2009 Certificates of Coverage that were denied. Mr. Epperson seconded. A vote was taken and all of the members were in favor. The motion passed.

Ms. Richmond said that behind Tab 10 there is a listing of facilities issued a program year 2010 Certificate of Coverage; and behind the blue divider page, a listing of facilities denied a program year 2010 Certificate of Coverage.

Ms. Richmond stated the process to issue and, if appropriate, deny a Certificate of Coverage changed in November 2009 with amendments to the Board's rules. She said under the new rule, the review of BUSTR registration data to determine compliance with the State Fire Marshal's rules was eliminated.

Ms. Richmond explained that during the review for the 2010 program year Certificates of Coverage, the staff now only ensures full payment has been received; financial responsibility for the deductible is demonstrated; and, the owner has certified with his signature that he is in compliance with the State Fire Marshal's rules. She said if the staff determines all these requirements have been met, the tanks existed in previous years and a Certificate for the subject tanks was issued to the owner in at least one of the prior two years, then a Certificate of Coverage is issued. Ms. Richmond said if the requirements are not met, the Certificate is denied in accordance with the Board's rules as previously discussed.

She said all processes within the Board's rules and the Revised Code were followed to make the determination to issue the program year 2010 Certificates of Coverage.

Ms. Richmond asked the Board to ratify her actions with respect to the 67 owners of 192 facilities receiving 2010 Certificates of Coverage on the list behind Tab 10.

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

Ms. Richmond said that behind the blue divider page in Tab 10 there is a listing of facilities denied a program year 2010 Certificate of Coverage.

Ms. Richmond asked the Board to ratify her actions with respect to the 53 facilities that were denied a Certificate of Coverage for program year 2010.

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

Executive Session

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

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

Reconvene Meeting

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

Confirm Next Meeting

Mr. Cable made a motion to adjourn the meeting. Ms. Hilvert seconded. All were in favor. The next board meeting will be Wednesday, June 8, 2011, beginning at 10:00 a.m.