



Petroleum Underground Storage Tank Release Compensation Board

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MINUTES OF THE 141st MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD March 21, 2012

BOARD MEMBERS IN ATTENDANCE

Jim Rocco
Duane Cable
Brian Epperson
Cheryl Hilvert
Steve Hightower
Tom Stephenson

EX-OFFICIO MEMBERS IN ATTENDANCE

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

OTHERS IN ATTENDANCE

Starr Richmond	Executive Director, PUSTRCB
Don Leasor	Chief Fiscal Officer, PUSTRCB
Cindy Duann	Environmental Claims Supervisor, PUSTRCB
Ellen Mitton	Administrative Coordinator, PUSTRCB
Homayoun Shariffi	Environmental Claims Analyst, PUSTRCB
Cindy Knight	Assurability Analyst, PUSTRCB
Nicole Johnson	Accounts Receivable Specialist, PUSTRCB
Cheryl Hawkinson	Assistant Attorney General
Eric Swaisgood	Speedway, LLC
Will Latt	Speedway, LLC
Tim Wilfong	Kemron
Dan Adams	ATC Associates
Michael Baker	BJAAM Environmental, Inc.
Verne Ord	BUSTR

Minutes submitted by:

Ellen S. Mitton
Administrative Coordinator

Call To Order:

Chairman Rocco convened the one hundred forty-first meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, March 21, 2012. The following members were in attendance: Jim Rocco; Duane Cable; Cheryl Hilvert; Steve Hightower; Brian Epperson; Tom Stephenson; William Hills representing Director David Goodman, Ohio Department of Commerce; Bill Bishilany, representing Josh Mandel, Treasurer, State of Ohio; and, Christopher Geyer, representing Director Scott J. Nally, Ohio Environmental Protection Agency.

Chairman Rocco welcomed William “Bill” Hills, recently hired as the Chief of the Bureau of Underground Storage Tank Regulations (BUSTR).

Chairman Rocco asked if there were any comments, questions, or discussion regarding the minutes from the January board meeting. Hearing none, Chairman Rocco stated that a motion passed at the January 11th meeting regarding a Speedway third-party claim that had not been presented as intended and he would like to withdraw the motion and amend the minutes.

Mr. Geyer moved to withdraw the motion on page 7 of the January 11, 2012 minutes that reads as follows, “Motion to authorize the director, the chair and legal counsel to negotiate third-party claims and agree to settlement as appropriate with the Board’s final approval.” Ms. Hilvert seconded. A vote was taken and all of the members voted in favor. The motion passed.

Chairman Rocco requested a motion to approve the January 11, 2012 minutes as amended by deleting the first motion made by John Hull on page 7 of the minutes. Mr. Hightower so moved. Mr. Cable seconded. A vote was taken and all members voted in favor. The motion passed.

Chairman Rocco stated he would like to address the aforementioned motion regarding the Speedway subrogation claim, which had been discussed at the January 11, 2012 meeting. He said at that meeting the wording incorrectly stated the motion was regarding a third-party claim and not a subrogation claim as intended.

Chairman Rocco requested a motion to authorize the Chairman and Executive Director in consultation with the Assistant Attorney General to negotiate and enter into a settlement agreement for the Board’s subrogation claim against Reliable Oil Equipment, Inc., for a release at Speedway Site #9598 located at 5 West Central Street, Springboro, Ohio. The full Board shall approve the final settlement amount.

Following a brief explanation by Chairman Rocco concerning the subrogation rights of the Board and the negotiations regarding Reliable Oil for the release at Speedway Site #9598, the motion was so moved by Mr. Geyer. Mr. Hightower seconded. A vote was taken and all members voted in favor. The motion passed.

BUSTR Report:

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

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

He said operator training seminars had been scheduled for March, April, and May. Mr. Hills said there had been a certified installer course in February and there would be a certified inspector course on April 9, 2012. He said additional information regarding these events could be found at <http://com.ohio.gov/fire/ReleasePreventionInformation.aspx>.

Mr. Hills said that BUSTR submitted the five-year rule review packet to the Joint Committee on Agency Rule Review (JCARR) on December 23, 2011 and the JCAAR hearing had been held on March 8, 2012. Mr. Hills said the tentative effective date of the rules is July 1, 2012. He stated rules seminars would be held on June 26 and June 28, 2012.

Mr. Hills said on behalf of and in consultation with the Department of Commerce, BUSTR continues activities under the American Recovery and Reinvestment Act of 2009 (ARRA). Mr. Hills said to date 34 sites had been identified for assessment and if needed, cleaned up under ARRA. He said 29 of those sites had received no further action letters (NFAs).

Mr. Hills said BUSTR also continues working on the OTTER database upgrade project, which is in its seventeenth week. He said the project currently is on target to meet the June 30, 2012 completion date.

Mr. Hills said Phase I of the click-scheduling project began February 17, 2012. In response to Chairman Rocco's inquiry, Mr. Hills explained the click-scheduling project is a computer program being used in other divisions within the Department of Commerce, in particular, by the Industrial Compliance elevator inspectors, and it is a program that geographically schedules the inspectors to visit entities that are located in the same geographical area.

He said the UST operation compliance inspection current grant cycle ends August 8, 2012. Mr. Hills said a total of 5,058 inspections had been conducted to date, which puts BUSTR 21% ahead of projections.

Mr. Hills said the corrective action current grant cycle ends September 30, 2012. He said that for the week ending March 3, 2012, there had been a total of 107 corrective-action or closure reports reviewed, which resulted in nine NFAs being issued. He said BUSTR now is 1% ahead of its total NFA projections for the current grant cycle.

Mr. Hills stated currently there are 3,799 owners of registered facilities and a total of 22,201 registered USTs. He said there had been 26,698 NFAs related to clean-ups issued by the BUSTR program.

Chairman Rocco stated that BUSTR is finalizing the updates to the technical guidance manual, which covers both closure issues and corrective action rules. Mr. Hills said it is expected to be completed ahead of schedule and BUSTR anticipated the manual to be available in early May.

Financial Report

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

Audit Report

Mr. Leasor stated the Auditor of State's office released the audited financial statements on January 17, 2012.

Financials

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

Mr. Leasor said as of March 20, 2012, the unobligated balance is \$6.8 million. He said there is currently \$4.6 million in the obligated account that is set aside for fiscal year 2012 claim settlement payments.

Mr. Leasor said the claims expense for January was approximately \$764,000; and, as of March 20, 2012, the claims paid expense this fiscal year is about \$4.4 million. He said the total operating expenses for January were just over \$126,000.

Mr. Leasor said after fee refund payments were deducted, approximately 98.7% of budgeted revenues had been collected this fiscal year. He said a more concise report regarding fee collections and refunds would be presented later in the meeting.

Mr. Leasor said the January rent line item reflects the new monthly rate of \$9,035 and the lease payment adjustments made for July through December.

He said as of January 31, 2012, the temporary services line item was approximately 69.2% of the budgeted amount. Mr. Leasor stated this expense is for a contract employee to assist with ongoing special projects.

Mr. Leasor said as of January 31, the postage line item is 74.5% of the budgeted amount and falls in line with prior years' expenses for the same time period.

Mr. Leasor said as of January 31, legal & professional expenses were approximately 66.5% of the amount budgeted. He said to date the collection costs charged to the Board by the Attorney General's Collections Enforcement Section and Special Counsel totaled \$31,100 and \$67,700, respectively. He said the collection costs charged by the Attorney General's Office of \$31,100 are offset by \$19,900 that was paid by the owners with delinquent fees. He stated that as of January 31, the collection costs, net of the amount paid by the owners, are approximately 92% of the total net collection costs for the entire previous fiscal year. He said these increased legal and professional expenses raise a concern because based upon projections, it is anticipated that the total actual expenses will exceed the approved budgeted amount for fiscal year 2012.

Mr. Leasor said to continue the normal course of business through June 30, he was requesting the Board approve an additional \$25,000 in the legal and professional expense line item. He stated such an increase would bring the total operating expenses to \$1,740,700, which should provide sufficient funds to conduct operations through the end of this fiscal year.

Chairman Rocco requested a motion to amend the fiscal year 2012 operating budget to increase the legal and professional line item by \$25,000 to a total of \$275,000, increasing the total budgeted operating expenses to \$1,740,700. Mr. Geyer so moved. Mr. Stephenson seconded and a vote was taken. All the members voted to amend the operating budget.

Mr. Leasor said we would like to enter into a contract with the database developer to develop two new modules in STARRS. He said one module would be to track subrogation cases; and, the second module would be to track settlement agreements and joint BUSTR enforcement litigation.

Mr. Leasor explained that entering into this contract would require a motion granting the Chairman the authority to enter into a contract in an amount not to exceed \$15,000 over a one-year period for the development of the two new modules. He said the funds for this request had been approved at the June 2011 Board meeting during the capital budget discussion. He said we now are seeking the Board's approval to enter into a contract.

Chairman Rocco requested a motion to authorize the Chairman to negotiate and enter into a one-year contract with Don Young for out-of-scope database work in an amount not to exceed \$15,000. Mr. Epperson so moved. Mr. Hightower seconded. A vote was taken and all members were in favor.

Fee Collection/Refund Report.

Mr. Leasor said an additional \$26,000 in fees had been refunded since the January Board meeting, bringing the total to \$185,290 or 74% of the \$250,000 fee refund goal.

Mr. Leasor said 352 fee refunds had been paid to 156 owners during the 2011 program year. He said the number of pending refunds had increased by 59 over the last two months bringing the total to just less than 3,500 accounts. Mr. Leasor said there is currently \$1.7 million in pending fee refunds.

Mr. Leasor said during the first eight months of this program year, approximately \$82,000 in fee refunds had been used to offset outstanding fees. He said during this same time period, the Attorney General's Office had collected approximately \$235,000 in outstanding fees, including collection costs that were charged to and paid by the owner.

Mr. Leasor said 250 owners representing 687 accounts totaling about \$1.7 million had been certified to the Attorney General's Office in this program year.

Mr. Leasor said ten Orders Pursuant to Law are currently in appeal status; four of these appeals are under review, three are pending settlement agreements, and three are scheduled for administrative hearings. He said there is also one determination to deny a Certificate of Coverage currently under appeal. Mr. Leasor said there had been five Ability to Pay Applications submitted since the November 2011 inception of the program.

Mr. Leasor said 3,595 fee statements had been mailed this program year, which is 98% of the total number of fee statements mailed in program year 2010. He said as of March 15, there had been 3,133 owners issued Certificates of Coverage, which is 96% of the total number of Certificates of Coverage issued in program year 2010. Mr. Leasor said currently there are 70 owners with certificates being processed; 45 owners with unresolved pending denials; and, 89 owners with unresolved determinations denying a certificate.

Mr. Leasor said there are 89 owners on the unclaimed funds list, which totals approximately \$102,000. He said the unclaimed funds list is updated monthly and is available on the Board's website at www.petroboard.org. He said the unclaimed funds list would also be included in the spring edition of "The UST Pipeline."

In response to Mr. Hightower's question regarding how long unclaimed funds must stay in an unclaimed status, Chairman Rocco requested Ms. Cheryl Hawkinson, Assistant Attorney General, to research this matter and follow up on this discussion at the June Board meeting.

Ms. Hawkinson reported that she and Ms. Richmond had been working together with the Attorney General's collections staff, negotiating delinquent fees with owners, and if resolved, drafting settlement agreements. She said they are also preparing settlement agreements for accounts settled

through the Ability to Pay program. Ms. Hawkinson stated that in addition, the Petroleum Board and BUSTR are pursuing joint enforcement actions against tank owners.

Ms. Hawkinson said she also is pursuing accounts where the underground storage tank site is the subject of a foreclosure action in order to protect the Board's interests and help banks cover themselves as they take over these properties. She said she is trying to intervene in foreclosure court proceedings so that potential future owners of the foreclosed property are aware Fund fees, including transfer fees and late fees, could be due. She said that by statute the fees would never go away but settlement is an option. Ms. Hawkinson said since the Board's appeal hearings are administrative, the Board cannot put a lien on any property unless it first receives a court judgment.

Following an in-depth discussion regarding the foreclosure process of properties with outstanding Fund fees for underground storage tanks, Chairman Rocco suggested that Ms. Hawkinson and the Board continue to work with BUSTR regarding foreclosed properties. He said it appears that the challenge facing the Board is to become involved at the beginning of the foreclosure process and not after someone unknowingly purchased property that had Fund fees outstanding prior to the sale.

Claims Report:

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

Ms. Duann said the current total maximum liability of in-house above deductible open claims is approximately \$28 million. She said the average clean up costs for all Fund eligible sites for which an NFA has been issued is \$126,714 per site and the average payout for these sites is \$67,990 per site.

Ms. Duann said sites cleaned up exclusively under BUSTR's 1999 and/or 2005 Risk-Based Corrective Action (RBCA) rule had an average clean-up cost of \$67,841 per site. She said after applying the deductible and disallowing non-reimbursable costs, the average claim payout is \$20,672 per site. Ms. Duann said there are currently 1,726 open claims pending review in-house.

Ms. Duann said that January and February had been great months for the claims staff because they settled a total of 140 claims and closed-out 12 claims with NFAs that were below the deductible. She said for the first eight months of this program year, the Board received an average of 64 claim packages per month and settled or closed an average of 66 claim packages per month. She said this is the first time in many years that the staff had settled or closed more claim packages than had been received per month. Ms. Duann stated for the first eight months of program year 2011 the total settlement amount is \$4.3 million. She said by extrapolating this number into twelve months, the staff expects a total settlement amount of \$6.5 million for this program year.

Ms. Duann said the Board received 46 eligibility applications during the first eight months of this program year and 43 eligibility applications were determined with an approval rate of 79%, which is close to the highest approval rate of 80% two years ago.

Ms. Duann said that during the first eight months of this program year, the Board received a monthly average of 16 requests for cost pre-approval and issued an average of 18 pre-approval notifications per month. Ms. Duann said the staff is making good progress with the cost pre-approvals backlog, stating it had gone from 83 pre-approval requests to 65 pre-approval requests within the last two months.

New Business

StarOhio Motion

Ms. Richmond said that she and Ms. Hawkinson, Assistant Attorney General, had attended a meeting with Mr. Gordon Short of the Ohio Treasurer's office. He informed them that he and members of the Treasurer's legal staff had researched matters regarding the authorization for transfers and investments of money for outside agencies by the Treasurer's office. Mr. Short said they had learned that neither the Treasurer's statutes, nor the Board's statutes, include any specific authorization to allow the Treasurer's office to make fund transfers or investments for the Petroleum UST Release Compensation Board, or any other Board.

She said the Treasurer's office requested the Board to prepare written authorization for the transfer and/or investment of funds regarding two issues; that is, the StarOhio account, and, any other investment institution if the Board were to move money somewhere other than the StarOhio account. Ms. Richmond stated she is prepared to address the first issue regarding StarOhio; however, at this time there is no need to discuss the second issue.

She stated that in the past the Board annually authorizes the Treasurer's office to transfer funds from the Board's custodial account into the interest bearing StarOhio account when the Board's custodial account balance exceeds the specified amount of \$200,000. She said when the custodial account is low and could cause a negative balance, without any written or verbal direction or authorization from the Board, the Treasurer's office transfers money from the StarOhio account into the custodial account. Therefore, Ms. Richmond requested the Board address this administrative issue and authorize the Treasurer's office to transfer money from the StarOhio account into the custodial account as needed.

Chairman Rocco requested a motion to authorize the Treasurer's office to transfer funds from the StarOhio unobligated account to the custodial account as needed to cover withdrawals against the custodial account. Mr. Hightower so moved. Mr. Cable seconded and a vote followed. Mr. Bishilany abstained and eight members voted in the affirmative. There were no nays and the motion passed.

Express Mart

Ms. Richmond stated that on March 23, 2010, A&D Beining Enterprises, doing business as Express Mart, had a release at the site located at 150 West Canal Street in Ottoville, Ohio, and as a result, they applied for and were granted first-party eligibility. She said after many months passed, Express Mart received a letter and invoices in the amount of \$52,323.13 from the U.S. Coast Guard for the cleanup of petroleum in the Little Auglaize River. Ms. Richmond explained that the Coast Guard had traced the petroleum release from the river back to the Express Mart. She said Express Mart then applied for third-party eligibility for the U.S. Coast Guard's costs.

Ms. Richmond stated she is requesting the Board to authorize the Chairman to enter into a settlement agreement for payment of \$52,323.13 to the U.S. Coast Guard. She said third-party eligibility had been granted to the U.S. Coast Guard; and, the Coast Guard had documented all its costs and submitted all invoices regarding this cleanup. Ms. Richmond stated this agreement also had a release stating there would be no more costs submitted by the U. S. Coast Guard for this release.

Chairman Rocco requested a motion to authorize the Chairman to enter into a settlement agreement with Express Mart for the payment of third-party claim costs in the amount of \$52,323.13 for the clean up of petroleum from the Little Auglaize River conducted by the U.S. Coast Guard. Mr. Hightower so moved. Mr. Epperson seconded and a vote was taken. All members voted in the affirmative.

Speedway – Reliable Oil Equipment, Inc.

Ms. Cheryl Hawkinson, Assistant Attorney General, was called upon to discuss the negotiation and subsequent settlement offer regarding the Board's subrogation claim against Reliable Oil Equipment, Inc. She said Reliable Oil had caused a release while working on the tank system at Speedway Site #9598. Ms. Hawkinson stated that she and Ms. Richmond, Executive Director of the Board, met with representatives of Reliable Oil Equipment and Speedway, LLC. She said following the negotiation process, a total settlement payment of \$385,000 was agreed upon, with \$30,000 to be paid to Speedway, LLC, for expenses regarding deductible, loss of business, and internal project management. She said \$355,000 would be paid to the Board.

Chairman Rocco requested a motion to authorize the Chairman to enter into a settlement agreement regarding the Board's subrogation claim against Reliable Oil Equipment, Inc., for a release at the Speedway Site #9598 located at 5 West Central Street, Springboro, Ohio, for the total settlement amount of \$385,000 with payment in the amount of \$30,000 to Speedway, LLC; and, payment in the amount of \$355,000 to the Petroleum UST Release Compensation Board. Mr. Geyer so moved. Mr. Hightower seconded. A vote was taken and all members voted in the affirmative.

Speedway – M&M Service, Inc.

Ms. Hawkinson said there had been a similar subrogation claim against M&M Service, Inc., for a release it caused at a Speedway site in Eaton, Ohio. She stated this release, however, had been estimated to be less costly than the release previously discussed regarding Reliable Oil Equipment, Inc. Ms. Richmond stated she expected the costs to closure to be less than \$200,000. Ms. Hawkinson said Reliable's insurer also insures M&M Service, Inc., and they had requested not to proceed with this claim until the Reliable Oil Equipment, Inc., claim had been settled. She said that today she is requesting the Board to authorize negotiations with M&M Service, Inc.

Chairman Rocco requested a motion to authorize the Chairman and Executive Director in consultation with the Assistant Attorney General to negotiate and enter into a settlement agreement for the Board's subrogation claim against M&M Service, Inc., for a release at the Speedway Site #1190 located at 1301 North Barron Street, Eaton, Ohio. The full Board shall approve the final settlement amount.

Mr. Hightower so moved and Mr. Bishilany seconded. A vote was taken and all members voted in the affirmative.

Old Business

Lease Update

Ms. Richmond said as mentioned in Mr. Leasor's report, the signed lease agreement had been received and the rent adjustments had been made to the budget.

Certificates of Coverage Ratification

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

Ms. Richmond said that behind Tabs 6 and 7 are listings of facilities that, since the January Board meeting, had been issued or denied a program year 2010 or 2011 Certificate of Coverage.

Ms. Richmond said that the process used to review the fee applications and issue or deny a Certificate of Coverage include a review for completeness to determine 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 for the operation and maintenance of petroleum underground storage tanks. She said if these requirements have been met and if the tanks existed in previous years, 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 explained that if deficiencies or compliance issues are discovered, notice is provided to the owner in accordance with the Board's rules. The owner is provided with 30 days to respond to the notice with information to correct the deficiency or compliance issue. If correcting information is not received within this time, a determination denying the Certificate of Coverage is issued to the owner. She said the Board's rules and the Revised Code make provisions for an appeal of the determination. Throughout this process the Board's staff works with the owner to correct the fee statement record and/or refers the owner to BUSTR to correct the registration record.

Ms. Richmond asked the Board to ratify her actions with respect to the issuance of the 2010 Certificates of Coverage for the three owners of 29 facilities on the list behind Tab 6.

In response to Mr. Geyer's question, Ms. Richmond explained that the issuance of Certificates of Coverage to numerous correctional facilities had been a result of reconciling the Department of Rehabilitation and Corrections account. She explained it had been a lengthy process and that there are still some USTs that are in the denial stage of the determination process.

Mr. Epperson moved to ratify the list of 2010 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 said that during this time period there were no 2010 Certificates denied.

Ms. Richmond asked the Board to ratify her actions with respect to the issuance of the 2011 program year Certificates of Coverage for the 107 owners of 307 facilities included on the first list behind Tab 7.

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

Ms. Richmond asked the Board to ratify her actions with respect to the denial of the 2011 program year Certificates of Coverage for the 44 owners of the 52 facilities included on the list behind the Tab 7 blue divider page.

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

Chairman Rocco reminded members that Financial Disclosure Statements for 2011 are to be filed with the Ethics Commission on or before April 16, 2012. He requested Ellen Mitton, the Board's Ethics Officer, to forward to the Board members the Ohio Ethics Commission internet link for the 2011 Financial Disclosure Statement form.

Confirm Next Meeting

Mr. Hightower made a motion to adjourn the meeting. Mr. Epperson seconded. All were in favor. The next board meeting will be Wednesday, June 13, 2012, beginning at 10:00 a.m.