



# Petroleum Underground Storage Tank Release Compensation Board

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## MINUTES OF THE 129th MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD November 18, 2009

### BOARD MEMBERS IN ATTENDANCE

Jim Rocco  
John Hull  
Duane Cable  
Steve Hightower  
Don Kuchta  
Tom Kmiec  
Tom Stephenson

### EX-OFFICIO MEMBERS IN ATTENDANCE

George Horvath, representing Director Kimberly Zurz, Ohio Department of Commerce  
Jake Wozniak, representing Kevin L. Boyce, Ohio Treasurer of State  
Chris Geyer, representing Director Chris Korleski, Ohio Environmental Protection Agency

### 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
John Hickey	Fiscal Specialist
Jonathan Maneval	Accounts Receivable Analyst
Donna Kestler	Claims Administrative Assistant
Cheryl Hawkinson	Assistant Attorney General
Sally Scheuermann	Speedway SuperAmerica
Jodi Handlin	BJAAM Environmental, Inc.
Dan Adams	ATC Associates

Minutes submitted by:

Ellen S. Mitton  
Administrative Coordinator

**Call To Order:**

Chairman Rocco convened the one hundred twenty-ninth meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, November 18, 2009. The following members were in attendance: Jim Rocco; John Hull; Duane Cable; Mayor Don Kuchta; Tom Stephenson; Steve Hightower; Tom Kmiec; George Horvath, representing Director Kimberly Zurz, Ohio Department of Commerce; Christopher Geyer, representing Director Chris Korleski, Ohio Environmental Protection Agency; and, Jake Wozniak, representing Kevin Boyce, Ohio Treasurer of State.

Chairman Rocco asked if there were any comments, questions, or discussion regarding the minutes from the September board meeting and there were none. Mr. Hull moved to approve the minutes. Mr. Hightower seconded the motion. A vote was taken and all voted in the affirmative. The motion carried.

**BUSTR Report:**

Chairman Rocco called upon George Horvath, Bureau Chief BUSTR, to present the BUSTR report.

Mr. Horvath stated that BUSTR continues to work toward completing one of the requirements of the Energy Act, which mandates the on-site inspection of each underground storage tank (UST) in Ohio every three years. He said to date there had been inspections at 4,647 facilities, which represents almost 59% of the total facilities. Mr. Horvath noted the current cycle close out date is August 8, 2010. He said that BUSTR previously had been on track to meet the inspection deadline, however, due to staff shortages and the on-going five-year rule review process, BUSTR would be realigning internal resources in order meet the deadline. Mr. Horvath stated that the Bureau's focus had been on litigation and ARRA requirements over the past few months.

Mr. Horvath said that the open positions within BUSTR had been approved and posted, and once filled, would help in meeting the upcoming deadlines.

Mr. Horvath said Mr. Bob Niederschmidt had been hired to work in the Hamilton county area through the SEE program (Senior Environmental Employee). He said the SEE employees are funded through the U.S. EPA.

Mr. Horvath stated that BUSTR continues to work on their process improvement project. He said current processes and policies are being reviewed to improve responsiveness and consistency, especially when it involves working with stakeholders. Mr. Horvath said the most recent focus had been in the enforcement area on the litigation preparation, working with the Assistant Attorney General's office, and how the enforcement files are prepared.

Mr. Horvath said the existing BUSTR administrative rules are being reviewed while simultaneously drafting new rules to conform to the requirements of the Energy Act of 2005. Mr. Horvath explained the petition period, comment period, and Ohio's formal rule adoption process noting BUSTR had set a July 2010 deadline. He said the petition period had closed and BUSTR had received over 2,000 petitions. Mr. Horvath stated they are looking at every petition. He said some of the petitions had unique suggestions however many of the ideas were similar in scope. He said the comment period would be announced soon; however, after receiving so many petitions, the time had to be moved back.

### **Executive Session**

Chairman Rocco requested a motion to go into executive session pursuant to R.C. 121.22 (G)(3) to discuss matters of pending or imminent court action.

Mr. Hightower so moved. Mr. Hull seconded and a roll call vote followed. The following members voted in the affirmative: Messrs. Rocco, Hull, Cable, Geyer, Hightower, Horvath, Kmiec, Kuchta, Stephenson, and Wozniak. There were no nays and the motion passed.

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

### **Financial Report:**

Chairman Rocco called upon Mr. Don Leasor, Chief Fiscal Officer, to present the Financial Report.

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

Mr. Leasor said as of September 30 there is currently a little over \$8.1 million in the obligated account that is set aside for fiscal year 2010 claim settlement payments. He said the current unobligated balance is \$10.9 million, and another \$6.7 million is in the debt service account.

Mr. Leasor said the claims expense for September was approximately \$279,000, noting this is below the amount for the same period last year. Mr. Leasor said a lump sum settlement agreement was being negotiated with a major oil company and is expected to be paid in late December.

Mr. Leasor indicated that as of November 16, 2009 a little under \$1.3 million had been paid out in claims. He said in November the Board received a \$100,000 check for Mr. Smalley's restitution payment. He said the restitution payment will offset the current year claims payments.

Mr. Leasor said the temporary services line item is a little high due to the fact that the amount budgeted in this item for the fiscal year was reduced from last year in anticipation of filling the assurability analyst position. He said he understood a person had been selected for the position and would officially become a member of the Board's staff on November 23, 2009.

Mr. Leasor said with the exception of the postage line item and trustee expense line item, which both are cyclical, all other expense items are on target for this time of the fiscal year.

Chairman Rocco requested Ms. Richmond to provide more information regarding the assurability analyst position. Ms. Richmond said Carla Winfrey would begin permanent employment with the Board beginning November 23, 2009. She indicated the position had been filled with different temporary personnel for well over a year. Ms. Winfrey had worked in this position as a temporary employee for a little less than one year and was responsible for the record number of certificates being issued for program year 2009.

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

Mr. Leasor said for the 2009 program year beginning on July 1, there had been \$13,864,100 collected in current year fees to date, and \$448,559 collected in prior year fees, which represents 97.7% of the \$14.6 million budgeted fee revenue. He said 3,341 tank owners had paid fees for 21,192 tanks, representing approximately 98% of the 21,700 tanks anticipated to be assured in this program year. Mr. Leasor explained that 73% of the fees were paid at the standard deductible and 27% were paid at the reduced deductible. Mr. Leasor noted the percentage between the two deductibles had continued to remain constant through the past ten years.

### ***Audit Update***

Mr. Leasor said the team of auditors from Schneider Downs had been in-house during the last two weeks of October to perform fieldwork for the audit. He said he was going to request the Auditor of State to move the submission deadline from December 31, 2009 to January 31, 2010 to allow more time for the Board's staff to finalize the audit schedules and reports. The audit will be presented to the Board at the January meeting and a comment period will follow. Mr. Leasor specifically requested that the members of the Finance Committee review the audited financial statements and provide comments to him.

### ***Update on Copier Purchase***

Ms. Donna Kestler, Claims Administrative Assistant, said prior to purchasing the copier, Mr. John Hickey, Fiscal Specialist, calculated the Board's historical usage and maintenance rate for the old copier. Ms. Kestler stated quotes were solicited from OCE, Konica Minolta, and Canon. Ms. Kestler said Canon did not respond to calls for quotes. She said she also inquired into the state's Cost Per Copy program. Ms. Kestler researched Minority Business Enterprises (MBEs) via the state of Ohio's Department of Administrative Services (DAS) website to find possible vendors and found no MBEs. She then contacted DAS by telephone to confirm there were no MBEs that sold and serviced copiers suitable for the staff's needs at a cost within the budgeted amount.

Ms. Kestler said the price of the Bizhub 361 copier was \$5,776 at both OCE and Konica Minolta. She said Konica Minolta was the source maker of the machine and the service contract offered by Konica Minolta was the least expensive, so the copy machine and service contract were purchased through Konica Minolta.

Ms. Kestler said the copier had been delivered on October 30, 2009 and is available for printing, copying, faxing, and scanning.

### **Claims Report:**

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

Ms. Duann said the current total maximum liability of in-house open claims is approximately \$30.3 million. She said using the historical claim payout ratio of 65-70%, the actual anticipated claim liability of unpaid claims is about \$20 million. She said 1,788 fund eligible sites had received an NFA and the average cleanup cost is \$123,489 per NFA site. Ms. Duann said for the 153 NFA sites

cleaned up exclusively under BUSTR's 1999 and/or 2005 risk based corrective action (RBCA) rules the average cleanup cost is \$66,760 per site.

Ms. Duann said with the exception of claims submitted by two major oil companies, the staff was currently reviewing claims received in December 2008, indicating it takes approximately 10-11 months before a claim is reviewed.

Ms. Duann said there are currently 21 claims under appeal, noting settlement addenda had been issued or more information had been requested from the tank owners for some of these appeals.

Ms. Duann said in September and October the claims staff had received a total of 150 claims and settled or closed 102 claims.

She said thus far in the 2009 program year, the claim payout percentage is about 65.1% and each settled claim receives an average of \$7,379. Ms. Duann said the total claims payment is just a little behind schedule and added the claims staff is currently preparing a lump sum settlement agreement with a major oil company for approximately 100 NFA claims with a net value of around \$2 million.

Ms. Duann said during the last four months 31 eligibility applications had been received. She said in that same time period, 33 eligibility applications had been approved and 6 had been denied, noting an all time high 85% approval rate.

Ms. Duann said in the last four months the Board received 73 requests for cost pre-approval and responded to 94 requests. Ms. Duann said under the new rule changes, it would not be necessary to seek pre-approval of costs for those Tier 3 work plans or monitoring plans when the estimated costs would not exceed \$6,000. Ms. Duann said with this rule change, it would reduce the staff's review time for these relatively inexpensive cost pre-approval items.

Ms. Duann said voluntary cost pre-approvals are approximately 20% of all cost pre-approval amounts. She said although some new owners or consultants are still submitting voluntary cost pre-approvals requiring feedback about typical cost estimates, many requests are from direct pay consultants who had significant experience with the Fund. Ms. Duann said an extensive review is necessary by the staff to provide a comprehensive response for these voluntary cost pre-approvals. She said if the Board were to discontinue the current practice of reimbursing the costs for consultants to prepare these seemingly unnecessary voluntary cost pre-approvals, submissions of this type of pre-approval requests might be reduced and that could further help to reduce the workload of the staff.

## **Old Business**

### ***Rules Adoption***

Chairman Rocco called upon Executive Director Richmond to discuss the rule adoption process. Ms. Richmond stated the proposed rule changes were filed with the Joint Committee on Agency Rule Review (JCARR) on August 7, 2009, and presented at a public hearing on September 9, 2009. Following testimony at the public hearing, proposed rules 3737-01-08 and 3737-01-12.1 were revised and adopted. These two rules were re-filed with JCARR on September 9, 2009. She said the proposed rule changes, including the two revised rules, were put on JCARR's consent agenda and on Monday, October 5, 2009, a JCARR hearing was conducted. No testimony or comments were made at that hearing.

Chairman Rocco asked for a motion that the proposed amendments to Rules 3737-1-01, 3737-1-02, 3737-1-03, 3737-1-04, 3737-1-04.1, 3737-1-05, 3737-1-06, 3737-01-07, 3737-1-08, 3737-01-09, 3737-01-09.1, 3737-01-10, 3737-1-11, 3737-1-12, 3737-1-12.1, 3737-1-13, 3737-1-15, 3737-1-16, 3737-1-17, 3737-1-18, 3737-1-19, 3737-1-20, 3737-1-21, and 3737-1-22 of the Ohio Administrative Code be adopted as proposed with an effective date of November 30, 2009.

Mr. Hull so moved. Mr. Hightower seconded and a roll call vote followed. The following members voted in the affirmative: Messrs. Rocco, Hull, Cable, Geyer, Hightower, Horvath, Kmiec, Kuchta, Stephenson, and Wozniak. There were no nays and the motion passed.

### **New Business**

#### ***Capitalization Policy***

Chairman Rocco called upon John Hickey to discuss the capitalization policy.

Mr. Hickey said following the 2008 audit, the auditors recommended the fiscal department put into writing the practices and procedures used in the past for recording and depreciating fixed assets. He said the proposed policy covered assets the Board reported to the state as well as the capitalization and depreciation procedures used in-house.

Mr. Hickey stated these reporting and accounting practices comply with the Ohio Revised Code, Department of Administrative Services' directives, and the Ohio financial reporting and accounting policies for capital assets and asset management policies and procedures.

Mr. Hickey said the draft policy was presented to the Finance Committee and the useful life of Board owned assets was discussed. Mr. Hickey said that as a result of those discussions, he was recommending increasing the useful life of computing and IT equipment from three years to five years, as the life span of IT equipment had increased over the years. He said the capitalization threshold had been set at \$500. Mr. Hickey said property with a value less than the capitalization threshold is reported as supplies and expensed in the period incurred. He said assets are tagged and inventoried and when assets are no longer useful or are obsolete, they are taken to state salvage.

Mr. Hull moved to adopt the policy as presented to include five years as the useful life of IT equipment and a \$500 cap for the capitalization threshold. Mr. Geyer seconded. A vote was taken and all voted in the affirmative. The motion passed.

#### ***Investment Policy***

Chairman Rocco called upon Don Leasor to discuss the investment policy.

Mr. Leasor said the investment policy had been developed with input from the Treasurer of State's office, the office of the Assistant Attorney General, and the Board's Finance Committee. He said the investment policy provided guidelines for the investment of monies within the Fund.

Mr. Leasor said the standards of care sets forth guidance for the prudent investment of funds, ethics and conflicts of interest, and the delegation of authority. He said the delegation of authority sets forth that the Board is responsible for the investment of funds, and the Board may designate staff to work with outside agents to carry out the investment program and to establish investment procedures consistent with the policy.

Mr. Leasor noted the policy established that the Board may enlist the services of the Treasurer of State to aid in the selection of securities permitted under the investment policy and may direct the Treasurer of State's investment department to purchase selected securities for investment. He said the policy also stated the Board may retain the services of an investment advisor licensed by the Ohio Division of Securities or is registered with the Securities and Exchange Commission to assist in the selection of securities.

Mr. Leasor said internal controls would be developed as appropriate and monitored to prevent and control losses. He said the section covering authorized investments specified the types of securities in which the Board may invest.

Mr. Leasor said the Finance Committee would annually review the investment policy and recommend to the Board improvements or enhancements to the policy.

Following a discussion regarding the maturity of investments, Mr. Hull moved to accept the investment policy as presented with the modification in Section D., item 2., under Authorized Investments to read "No investment shall be made that will cause the dollar weighted average duration of the portfolio to exceed three years." Mr. Stephenson seconded and a vote was taken. All voted in the affirmative and the motion passed.

Mr. Leasor stated a representative of the Treasurer of State's office would be presenting information regarding the Board's STAR Ohio account performance and alternative investments at the January Board meeting.

### ***Finance Committee Report***

Chairman Rocco said the Finance Committee met in October and discussed the annual fees for the 2010 program year and also the current bond issues with respect to the Board's long-term projections.

Chairman Rocco stated the Finance Committee recommended the Board not increase the 2010 annual fees and not change the deductible amounts. He asked for a motion to set the 2010 annual fees and deductibles at \$600 for the standard deductible of \$55,000 and \$800 for the reduced deductible of \$11,000. Mayor Kuchta so moved. Mr. Cable seconded and a vote followed. All voted in favor and the motion passed.

Chairman Rocco said the Finance Committee also discussed the advantage of the early pay-off of bonds and the significant interest savings that would mean for the Board. He said if the Board were to pay off the bonds a year early, there would be a fairly significant interest savings; and, if the Board were to pay off the bonds two years early, there would be an even greater interest savings. He stated the bonds are scheduled to mature in August 2013.

Chairman Rocco noted there is currently \$6 million obligated to pay the bonds and there is no other access to these monies on an annual basis. He said the \$6 million is used to pay the bond interest and principal; however, the Board must also maintain \$6 million in a fund for purposes of securing the bonds. Chairman Rocco called on Don Leasor to further discuss the early bond payoff.

Mr. Leasor said the Board currently funds the bonds one year in advance. He said the Board's staff transfers monies to the Debt Service Fund in July for the ensuing fiscal year's principal and interest

payments. The point of paying off the bonds one year early is that money would be deposited in the Debt Service Fund in July 2012 and could just as well be used to pay off the bonds at that time, rather than allowing the money to sit in the Debt Service Fund for a year. If the bonds were paid off one year early, the interest savings would be a little over \$360,000. Mr. Leasor said if the bonds were paid off two years early, the Board would have to fund both the 2012 and 2013 fiscal years' debt service payments in July 2011, requiring a payment on July 1, 2011, of approximately \$11.8 million. This \$11.8 million would be combined with an existing \$6 million, which will have been placed into the Debt Service Fund on July 1, 2010 for a total of about \$18 million. This amount would then be used to pay off the bond principal and interest on August 15, 2011. He said that by paying off the bonds two years early, the Board would avoid interest expense of approximately \$1.1 million.

Following a brief conversation, Mr. Wozniak offered the services of the Treasurer of State's office to assist in evaluating bond early pay-off. Chairman Rocco suggested that Ms. Richmond, Mr. Leasor, and Mr. Wozniak work together to research viable options regarding early bond payoff and to present their information at the March meeting.

### ***Hardship Application***

#### **Claim #10226-0001/11/05/97– Owner: Paul Gelpi, dba Swan Cleaners**

Ms. Richmond stated that as the sole shareholder, Mr. Paul Gelpi applied for hardship status on behalf of Swan Super Cleaners, Inc., for the clean up of a petroleum release that occurred in 1997 at 524 Thurman Avenue in Columbus. She said this was Swan's first request for hardship status.

Ms. Richmond stated that to date, the Fund had reimbursed approximately \$108,000 for the clean up of this release. She said Swan's has a direct pay arrangement with its consultant, Civil & Environmental Contracting. Ms. Richmond said although no claims are currently pending review, \$51,000 had been approved for the installation of a collection trench and a free product recovery device and O&M for one year. She stated it is believed an NFA would be obtained within this one year time period.

Ms. Richmond said although Swan's revenue had decreased in recent years, the most current financial information provided to the Board indicated Swan's had annual revenue of \$7.5 million and current assets including cash, inventory, and accounts receivable of \$400,000. She said Swan's had short-term liabilities of just under \$1 million and an additional \$1.5 million in long-term debt.

Ms. Richmond said based on the information presented in its application, financial hardship is not imminent as a result of having to perform \$51,000 in corrective actions over a one-year period. She also noted that in direct payment arrangements, the consultant, not the responsible person, fronts the costs and waits for reimbursement from the Fund.

Ms. Richmond recommended the Board deny Swan Cleaners request for hardship status. Mr. Hull made a motion to deny Swan Cleaners hardship application. Mr. Stephenson seconded and a vote was taken. All members voted in the affirmative. The motion to deny hardship status to Swan Cleaners carried.

Chairman Rocco called upon Ms. Richmond to discuss the possibility of charging fees for insufficient funds checks from tank owners. Ms. Richmond explained that currently when a check is returned to the Board due to insufficient funds, the staff responds with a letter to the tank owner



requesting a replacement check. She said there had been instances when Certificates of Coverage had to be revoked due to returned insufficient funds checks. Ms. Richmond said there is not a fee for this service at this time and noted there is time consuming administrative work involved in corresponding with the tank owner, revoking certificates, reissuing certificates, etc.

Following a brief discussion, Chairman Rocco asked Ms. Cheryl Hawkinson, Assistant Attorney General, to research the issue to determine whether this would require a new rule or rule change; and, he requested Mr. Leasor and Ms. Richmond to establish a suitable way to determine such a fee.

### ***Certificate 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 explained that behind Tab 10 there are two lists of owners. The first is a listing of owners who had been issued a program year 2008 Certificate of Coverage; and, behind the blue divider page, a listing of owners who had been denied a program year 2008 Certificate of Coverage. She said behind Tab 11 there is a listing of owners who had been issued a program year 2009 Certificate of Coverage, and, behind the blue divider page, a listing of owners who had been denied a program year 2009 Certificate of Coverage. Ms. Richmond said the process used to review the fee applications and issue or deny a 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 is considered to determine whether tanks for which coverage is sought are in compliance with BUSTR 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 owners to correct the fee statement record and/or refers the owner 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 that the Board ratify her actions with respect to the 20 owners of 74 facilities receiving 2008 Certificates of Coverage.

Mr. Hull moved to ratify the list of 2008 Certificates of Coverage that were granted. Mr. Hightower seconded. A vote was taken and all were in favor. The motion passed.

Ms. Richmond stated all of the processes as stated in the Board's rules and the Revised Code were followed in making the determinations for denying Certificates of Coverage. Ms. Richmond asked that the Board ratify her actions with respect to the 96 facilities that were denied a Certificate of Coverage for program year 2008.

Mr. Hull moved to ratify the list of 2008 Certificates of Coverage that were denied. Mr. Cable seconded. A vote was taken and all were in favor. The motion passed.

Ms. Richmond asked that the Board ratify her actions with respect to the 387 owners of 1,129 facilities receiving 2009 Certificates of Coverage.

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

Ms. Richmond asked that the Board ratify her actions with respect to the 11 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. Cable seconded. A vote was taken and all were in favor. The motion passed.

**Confirm Next Meeting**

Mr. Kmiec made a motion to adjourn the meeting. Mr. Hightower seconded. All were in favor. The next board meeting will be Wednesday, January 13, 2010, beginning at 10:00 a.m.