



# Petroleum Underground Storage Tank Release Compensation Board

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## MINUTES OF THE 134th MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD November 10, 2010

### BOARD MEMBERS IN ATTENDANCE

Jim Rocco  
John Hull  
Duane Cable  
Brian Epperson  
Steve Hightower  
Cheryl Hilvert  
Don Kuchta  
Tom Kmiec  
Tom Stephenson

### EX-OFFICIO MEMBERS IN ATTENDANCE

Andy Thompson, 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
Madelin Esquivel	Assistant Director, PUSTRCB
Cindy Duann	Environmental Claims Supervisor, PUSTRCB
Ellen Mitton	Administrative Coordinator, PUSTRCB
Donna Kestler	Claims Administrative Assistant, PUSTRCB
Rita Arnold	Office Assistant, PUSTRCB
Krista Nichols	Accounts Receivable Specialist, PUSTRCB
Rick Trippel	Environmental Claims Analyst, PUSTRCB
Cheryl Hawkinson	Assistant Attorney General
Howard Silver	Hearing Officer
Jim Heisel	Student
Eric Swaisgood	Speedway SuperAmerica
Dan Adams	ATC Associates
Mike Byrne	Sunoco, Inc.

Minutes submitted by:

Ellen S. Mitton  
Administrative Coordinator

### **Call To Order:**

Chairman Rocco convened the one hundred thirty-fourth meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, November 10, 2010. The following members were in attendance: Jim Rocco; John Hull; Cheryl Hilvert; Steve Hightower; Duane Cable; Mayor Don Kuchta; Brian Epperson; Tom Stephenson; Tom Kmiec; Andy Thompson, 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. Mayor Kuchta moved to approve the minutes. Mr. Hull seconded the motion. A vote was taken and eleven members voted in the affirmative. Mr. Wozniak abstained. The motion carried.

### **BUSTR Report:**

Chairman Rocco called upon Andy Thompson, Bureau Chief, to present the BUSTR report.

Mr. Thompson said BUSTR recently interviewed candidates for an additional corrective action supervisor. He said the candidate filling this position would be a counterpart to Kelly Gill, the current corrective action supervisor, and noted that the state would be divided into two separate sections with each supervisor covering their respective section. Mr. Thompson said this added position is anticipated to increase efficiency with report reviews. He stated that the two enforcement coordinator positions within the enforcement division had been filled; and, stated BUSTR would be restructuring the enforcement section to perform more duties internally.

Mr. Thompson said there had been an Attorney 4 position posted to work in BUSTR's environmental section within the Release Prevention Division; and, a position posted for an Underground Storage Tank Inspector that would report to the supervisor of the UST section.

Mr. Thompson 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. Thompson stated that BUSTR provided the proposed rules to stakeholders utilizing the Governor's "e-notification" process, as well as the Limited Report on Comments. He said a comment period would follow and the Department of Commerce expected to file the rules prior to the end of December 2010. Mr. Thompson said in accordance with the timeframe provided to the US EPA, these BUSTR rules would be effective during the first quarter of 2011.

Chairman Rocco said BUSTR had posted rules 1307:7-9-05, 1307:7-9-06, 1307:7-9-07, 1307:7-9-08, and 1307:7-9-18; noting that rule 1307:7-9-18 was the new "red tag rule" regarding prohibition on delivery of petroleum products. He stated that rule 1307:7-9-05, regarding financial responsibility, was posted with no changes during the five-year rule review process and would be re-addressed at a later date as many changes are needed to clarify the financial responsibility provisions.

### **Financial Report:**

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

### *August & September Financials*

Mr. Leasor stated the August and September financial statements 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 there is currently \$2.3 million in the obligated account that is set aside for fiscal year 2011 claim settlement payments. He said the current unobligated balance is approximately \$5.2 million.

Mr. Leasor said the claims expense for September was approximately \$414,000; and, as of November 9, the amount reimbursed this fiscal year is about \$2.2 million.

Mr. Leasor said operating expenses for September totaled just over \$110,000. He said the legal and professional line item is at approximately 31% of the amount budgeted and included the 2010 fourth quarter payment in July for the services of the Assistant Attorney General. Mr. Leasor said this also included fees assessed by the Attorney General's Revenue Recovery Section as collection costs, which were higher due to special counsel fees.

Mr. Leasor said the postage line item is approximately 58% of the amount budgeted and included postage costs for the annual fee statement mailing and the Spring newsletter.

Mr. Leasor noted all other expenses are on target for this time in the fiscal year.

Mr. Leasor said the bond interest and principal are 362% of the amount budgeted as a result of the bonds being retired early on August 15<sup>th</sup>. He said when the budget was prepared in June 2010, it did not assume the bonds would be retired in fiscal year 2011.

Mr. Leasor noted the current and long-term liabilities reflect zero amounts on the balance sheet due to two reasons: 1) the retirement of the bonds; and, 2) the books are maintained on a cash basis during the year and accrued liabilities are recorded only at year-end.

Mr. Leasor said the main production copier had been purchased at a lower cost than the \$10,000 amount approved as part of the 2011 Capital Budget.

In response to Chairman Rocco's question, Mr. Leasor confirmed that the Board had not experienced any out-of-pocket expense due to the water damage experienced in May. He said there is one more claim to be submitted and it is expected that the insurance company would reimburse that claim at 100% also.

### *Fee Statement Statistics*

Mr. Leasor said for the current 2010 program year, there had been a little under \$13.7 million collected in current year fees to date, and just over \$400,000 collected in prior year fees net of refunds, which represents 97.3% of the \$14.5 million budgeted fee revenues for fiscal year 2011. He said this fiscal year the goal is to pay \$250,000 in fee refunds. He said to date \$80,500 had been refunded and indicated we are on target to meet the goal.

He said to date 3,321 owners have paid fees for 20,924 tanks. Mr. Leasor explained that 72% of the fees were paid at the standard deductible and 28% were paid at the reduced deductible.

### *Audit Report*

Mr. Leasor reported that the team of auditors from Schneider Downs had been on-site from October 13 through November 3 to perform fieldwork for the 2010 audit. He said the Auditor of State had granted the request for an extension of the audit submission deadline from December 31, 2010 to January 31, 2011; and, the audit would be presented to the Board at the January 19<sup>th</sup> Board meeting.

In response to Mr. Hull's question, Ms. Richmond stated the claim liability study was scheduled for routine review by actuaries every five years unless the assumptions change, in which case, a review would be required.

Mr. Leasor said the 2012-2013 biennial budget was submitted to the Office of Budget and Management on November 1, 2010. He stated this budget is for personnel costs only and did not include cost of living or merit increases per the specific requirements of that office.

### **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 the 1,609 in-house above deductible open claims is approximately \$28 million. Ms. Duann said using the average claim payout ratio of 70% the actual anticipated claim liability of unpaid in-house claims is about \$20 million.

Ms. Duann said there are currently 27 claims under appeal. She stated a number of these appealed claims are in settlement negotiations or are scheduled for a hearing.

Ms. Duann said for the first four months of this program year, the Board received an average of 66 claim packages per month and settled or closed an average of 59 per month. She said we are now one-third of the way through the program year and to date approximately \$2 million had been made in settlement determinations.

Ms. Duann stated the current payoff percentage is now 72.3%, which is slightly higher than previous years. She said on average 21% of the claim face values are disallowed. Ms. Duann said 16% are disallowed for excessive costs; 15% are for non-reimbursable tank removal costs; and, 14% for late-filed costs.

Ms. Duann said a major oil company sold many of their facilities to at least five new owners with limited power of attorney for signatures and these new owners are responsible for cleanup and submission of claims. She said many of these owners and/or consultants are out of state and not familiar with Ohio's claims process. Ms. Duann said this is causing staff to spend more time reviewing these claims and advising the new owners and/or consultants how to properly prepare claim packages.

Ms. Duann said the Board received a monthly average of three eligibility applications for the first four months of this program year, which was lower than usual, and an average of six eligibility applications were determined per month. She said currently there are 15 open eligibility applications to be determined. Ms. Duann said of the 15 open applications, the staff was waiting for more information to be submitted from tank owners for six applications.

Ms. Duann said typically cost pre-approvals are being reviewed within 45-60 days of receipt. She said during the past four months the Board received 59 requests for cost pre-approval and issued 93 pre-approval notifications. Ms. Duann said there are currently 75 cost pre-approval applications in-house to be reviewed.

## **Old Business**

### *Finance Committee Report*

Chairman Rocco stated the Finance Committee met and reviewed the projections now that the bonds had been retired. He stated increasing fees for the coming year would have no impact on current cash flow issues that may result from paying off the bonds early. He said the Fund's unobligated balance would recover from the payoff of the bonds before the end of the next fiscal year even without a fee increase. Chairman Rocco said the Finance Committee recommended maintaining fees at their current level for the upcoming 2011 program year.

Chairman Rocco requested a motion to maintain the fees at \$600 per tank for the standard deductible and \$800 per tank for the reduced deductible. Mayor Kuchta so moved and Mr. Stephenson seconded. A vote was taken and all of the members were in favor. The motion passed.

Ms. Hawkinson recommended a vote be taken to maintain the deductible amounts at current levels if that is the Finance Committee's intent. Mayor Kuchta moved to leave the standard deductible at \$55,000 for the \$600 per tank fee and the reduced deductible at \$11,000 for the \$800 per tank fee. Mr. Epperson seconded and a vote was taken. All members voted in favor. The motion passed.

Chairman Rocco said at the September Board meeting \$4.5 million had been obligated for claims expenses. He said the Finance Committee recently reviewed the Board's cash flow and the current financials and the committee recommended the Board obligate another \$3.5 million for claims expenses, bringing the total to \$8 million for the 2011 fiscal year. Mr. Hull so moved and Mr. Epperson seconded. A vote was taken and all of the members were in favor. The motion passed.

### *Line of Credit*

Chairman Rocco said during the discussions at the September Board meeting regarding paying off the bond debt, he had requested that Ms. Hawkinson research the legality of the Board securing a line of credit if needed. He called upon Ms. Hawkinson and she reported that the Board could not raise revenue from any other source besides the issuance of revenue bonds or tank fees. She said a state officer may not create a state debt unless expressly authorized by the legislature to carry out the limited borrowing authority with Article VIII of the Constitution.

## **New Business**

### *Appeal*

Owner #2012, Eligibility ID: 0003, City of Columbus, Columbus Division of Refuse Collection

Mr. Howard Silver, Board Hearing Officer, presented his Report and Recommendation to the Board of the appeal of the City of Columbus regarding the denial of the eligibility application for the City's Division of Refuse Collections underground storage tank located at 2100 Alum Creek Drive in Columbus, Ohio.

Mr. Silver said beginning in 1991, the City of Columbus owned and operated a 15,000-gallon underground storage tank (UST) containing diesel fuel located at this site. He said from 1991 until June 21, 2007, this UST received, stored, and dispensed diesel fuel.

Mr. Silver said during the first half of 2007, the City decided to change the UST at this site from diesel fuel to biodiesel fuel. He said on June 21, 2007, the City hired Refuel Environmental Services, LLC to clean the emptied tank. Mr. Silver said it was the City's position that employees of Refuel punctured the tank wall. He said the City argues that June 21, 2007, is when the release originally occurred from this tank.

Mr. Silver continued, stating that on June 22, 2007, the recently cleaned UST at the site was filled with 7,340 gallons of biodiesel fuel. He said the City stated that prior to the changeover from diesel fuel to biodiesel fuel, one load of diesel fuel amounting to roughly 7,000 gallons was ordered for this UST every 13.5 days. Mr. Silver stated the City said after the changeover to biodiesel fuel, one load of biodiesel fuel was ordered every 8.4 days. He said the City noted they had projected a decrease in fuel efficiency with the change to biodiesel fuel and originally ascribed the steep increase in fuel usage to the expected decline in fuel efficiency.

Mr. Silver said the UST had an automatic tank gauging (ATG) system that provided daily readings of product inventory in the tank and performed a monthly tank leak detection test. He said the City provided printed test results that reported passing monthly leak detection test results on April 8, May 6, and June 3, 2007. He said on July 8, 2007, the City's ATG system printed an inconclusive test result, reporting neither a passing nor a failing test result.

Mr. Silver stated on August 5, 2007, the City reported that the ATG system printed a report that indicated the monthly leak detector test for August had a failed test result. He said the printed test result indicated that the tank was leaking fuel at a rate of 17.78 gallons per hour.

Mr. Silver said on September 2, 2007, the City reported an inconclusive test result was produced by the tank's ATG system.

On September 7, 2007, the station manager concluded that too much biodiesel fuel was being ordered to be explained by fuel usage and diminished fuel efficiency. A reconciliation of the inventory of fuel was initiated and the City reported to the State Fire Marshal that a release was suspected on September 17 and confirmed and reported on September 18, 2007.

Mr. Silver said on September 16, 2008, the City filed an application for eligibility for reimbursement for corrective action costs with the Petroleum UST Release Compensation Board.

Mr. Silver stated that on January 29, 2010, the Director of the Financial Assurance Fund denied the City's application for eligibility because the City had not been in compliance with the State Fire Marshal's leak detection rules at the time of the release and the City had failed to report the suspected release in a timely manner under the State Fire Marshal's rules.

Mr. Silver said he finds that the denial of the City of Columbus's application for eligibility under 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.

Mr. Hightower moved to uphold the Executive Director's decision and the hearing officer's findings of fact and conclusions of law, and recommended it be affirmed. Mr. Hull seconded. A vote was taken and all were in favor. The motion carried.

### *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 behind Tab 7 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 since the September Board meeting.

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 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 11 owners of 43 facilities receiving 2009 Certificates of Coverage.

Mr. Hull moved to ratify the list of 2009 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 36 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. Mayor Kuchta seconded. A vote was taken and all of the members were in favor. The motion passed.

Ms. Richmond said behind Tab 8 there is a listing of owners who had been issued a program year 2010 Certificate of Coverage; and behind the blue divider page, a listing of owners who had been 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 the 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 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 172 owners of 513 facilities receiving 2010 Certificates of Coverage on the list behind Tab 8.

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

Ms. Richmond said behind the blue divider page in Tab 8 there is a listing of owners who had been denied a program year 2010 Certificate of Coverage.

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

Mr. Hull moved to ratify the list of 2010 Certificates of Coverage that were denied. Mr. Cable 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. Stephenson seconded and a roll call vote followed. The following members voted in the affirmative: Messrs. Rocco, Hull, Cable, Epperson, Hightower, Kmiec, Kuchta, Thompson, Stephenson, Geyer, and Ms. Hilvert. 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. Kmiec made a motion to adjourn the meeting. Mr. Hightower seconded. All were in favor. The next board meeting will be Wednesday, January 19, 2011, beginning at 10:00 a.m.