



Petroleum Underground Storage Tank Release Compensation Board

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MINUTES OF THE 166th MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD November 16, 2016

BOARD MEMBERS IN ATTENDANCE

Jim Rocco
John Hull
Don Bryant
Ron Falconi
Tom Stephenson

EX-OFFICIO MEMBERS IN ATTENDANCE

Bill Hills, representing Director Jacqueline Williams, Ohio Department of Commerce
Chris Geyer, representing Director Craig Butler, Ohio Environmental Protection Agency
J.D. Pisula, representing Josh Mandel, State Treasurer of Ohio

OTHERS IN ATTENDANCE

Starr Richmond	Executive Director, PUSTRCB
Madelin Esquivel	Assistant Director, PUSTRCB
Don Leasor	Chief Fiscal Officer, PUSTRCB
Cindy Duann	Claims Supervisor, PUSTRCB
Jonathan Maneval	Administrative Coordinator, PUSTRCB
Scott Ruffing	Environmental Claims Analyst, PUSTRCB
Dave Gram	Environmental Claims Analyst, PUSTRCB
Jennifer Croskey	Assistant Attorney General
Bill Behrendt	OPMCA
Doug Darrah	ATC Group Services LLC
Sean Hetrick	BJAAM Environmental, Inc.
Justin Wilde	BJAAM Environmental, Inc.

Minutes submitted by:


Jonathan Maneval
Administrative Coordinator

Call to Order:

Chairman Rocco convened the one hundred sixty-sixth meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, November 16, 2016.

The following members were in attendance: Jim Rocco; John Hull; Don Bryant; Ron Falconi; Tom Stephenson; Bill Hills, representing Director Jacqueline Williams, Ohio Department of Commerce; Chris Geyer, representing Director Craig Butler, Ohio Environmental Protection Agency; and J.D. Pisula, representing Josh Mandel, State Treasurer of Ohio.

The following member was not in attendance: Scott Fleming.

Minutes:

Chairman Rocco asked if there were any comments or questions regarding the minutes from the September 7, 2016 Board meeting, and there were none. Mayor Falconi moved to approve the minutes. Mr. Bryant seconded. A vote was taken and all members voted in the affirmative. The minutes were approved as presented.

BUSTR Report:

Chairman Rocco called upon Bill Hills, Bureau Chief, to present the Bureau of Underground Storage Tank Regulations' (BUSTR) report.

Mr. Hills reported that intermittent employees had been hired as file room clerks, and a paralegal had also been hired to assist the in-house attorney.

Mr. Hills said 184 petroleum underground storage tank (UST) release sites are being researched through the responsible party search program for this fiscal year. He noted this was a slight decrease from the 200 sites researched in previous years due to grant cuts. The program is used to identify the owners and operators that are responsible for the investigation and cleanup of petroleum releases from UST systems.

Mr. Hills reported that seven grants had been awarded through the Abandoned Gas Station Cleanup Grant Program. He said an additional four to six requests are currently being reviewed. The program is administered by the Ohio Development Services Agency, in partnership with the Ohio EPA and BUSTR, and has \$20 million available to local government entities to be used for the cleanup of abandoned gas station sites.

Mr. Hills reported that BUSTR staff had completed their annual ethics training and the staff is now participating in security awareness training concerning computer use and protection. He said the appropriate personnel will complete their OSHA (Occupational Safety and Health Administration) training in December.

Mr. Hills stated that a second set of draft administrative rule revisions had been posted. He said although public comments were requested by November 11, 2016, additional comments can still be submitted through the State Fire Marshal's website. He said BUSTR personnel are currently reviewing comments submitted by OPMCA (Ohio Petroleum Marketers & Convenience Store Association) and

he hopes for responses to their comments to be posted by the end of the month. He said BUSTR will arrange to meet with interested parties to address any remaining concerns, and the goal is to file the proposed rule amendments with the CSI (Common Sense Initiative) Office and JCARR (Joint Committee on Agency Rule Review) in January or February of 2017.

Mr. Hills reported for the week ending November 5, 2016, there were 90 new inspections performed for a total of 1,942 inspections for the three-year inspection cycle ending June 30, 2019. He said that three NFAs (no further actions) were generated during the week ending November 5, 2016, for a total of 33 NFAs for the grant cycle ending September 30, 2017.

Mr. Hills stated that, as of November 5, 2016, there were 21,575 registered USTs and 3,642 owners of 7,291 registered facilities.

Chairman Rocco asked whether a municipality could apply for grant money through the Abandoned Gas Station Cleanup Program before taking title to the property and pointed out that government entities may be reluctant to acquire a property and assume its environmental liabilities without knowing whether the grant money will be awarded. Mr. Hills replied that, if the site is classified by BUSTR as “Class C”, meaning there is no viable owner able to pay for cleanup costs, they can apply for the grant to clean it up.

Financial Reports:

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

Audit Update

Mr. Leasor said the auditors from Kennedy Cottrell Richards completed their in-house portion of the audit in October, and the goal was to present the audited financial statements at today’s meeting in order to meet the Auditor of State’s December 31, 2016 submission deadline. However, due to multiple responsibilities over the past few months, additional time was needed for its preparation. He said a request to extend the filing deadline would be submitted to the Auditor of State. It is expected that the audit will be presented at the January Board meeting and subsequently filed with the Auditor of State.

Mr. Leasor said that, in the event the Auditor of State’s Office denies the request for an extension of time to submit the audit, he recommended the Board authorize a member to review the audit on behalf of the Board and approve its filing with the Auditor of State so that it can be submitted by the December 31, 2016 deadline. Chairman Rocco noted this action is simply a formality and likely to be a moot issue since extension requests have been granted in the past. He then asked if a member would agree to review and provide comment on the audit if necessary, and Mr. Geyer volunteered. Chairman Rocco then requested a motion that, in the event the Auditor of State’s Office denies a request for an extension of time to submit the audit, the Board authorizes Chris Geyer to review and provide comments on the audit and authorize the audit to be submitted prior to December 31, 2016. Vice-Chairman Hull so moved and Mr. Hills seconded. A vote was taken and all members were in favor. The motion passed.

August and September Financials

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

Mr. Leasor reported that, as of November 15, 2016, the unobligated account balance is \$26 million. He said this amount includes \$12 million in STAR Ohio (State Treasury Asset Reserve of Ohio) and the \$14 million invested in U.S. treasuries and U.S. agency callable bonds. He said at the June meeting \$9 million was obligated for the payment of claims and the obligated account balance as of November 15, 2016, is \$6.4 million.

Mr. Leasor said tank revenues would be discussed during his presentation of the fee statement statistics report.

Mr. Leasor reported that, as of September 30, 2016, we are one quarter into the fiscal year and expenses should be about 25% of the budgeted amount. He said the claims expense for the month of September was approximately \$539,000, and to date, \$2.6 million has been paid for claims for fiscal year 2017.

Mr. Leasor reported that operating expenses for the month of September were approximately \$124,000. He said a temporary service employee is being used for a special project and the expenses were about 22% of the amount budgeted. He pointed out that expenses for office supplies were 33% of the amount budgeted. He explained that these expenses were above the anticipated amount due to an unusually high volume of records being retrieved and refiled from offsite storage. He noted that these records had been needed for litigation purposes and the costs may be reclassified as a legal and professional expense since they are directly related to litigation. Chairman Rocco asked that the costs be shown in a separate line item under the legal and professional expenses so the Board members will know they are not a typical day-to-day operating expense.

Mr. Leasor said postage expenses were 55% of the amount budgeted. He said this was due to postage fees for the final quarter of fiscal year 2016 being paid in July of fiscal year 2017. He said these charges include fees for the annual fee statement mailing which is sent by certified mail. He noted the employee expenses were about \$6,000 of the \$27,900 budgeted for the fiscal year. He explained that these expenses are for 13 employee parking passes and each pass costs \$145 a month.

Mr. Leasor said all other expenses are where they should be at this time in the fiscal year.

Fee Statement Statistics

Mr. Leasor reported, as of November 15, 2016, the per-tank fees collected were approximately \$9.2 million, which represents 97% of the billed amount. He said between July 1, 2016, and November 15, 2016, a total of \$191,000 was collected for prior years' fees, net of refunds of \$4,300.

Mr. Leasor said for the 2016 program year, 15,500 tanks were billed at the standard deductible (\$55,000) per-tank fee and about 5,600 tanks were billed at the reduced deductible (\$11,000) per-tank fee. He reported, as of November 15, 2016, the fees had been paid at the standard deductible rate for just under 14,700 tanks and at the reduced deductible rate for 5,550 tanks. He said fees for a total of 20,241 tanks had been paid by 3,139 owners. He said this compares to fees being paid for 20,354 tanks by 3,197 owners for the same period of time in the prior year.

Mr. Leasor said for the program year ended June 30, 2016, fees had been paid for a total of 20,712 tanks by 3,249 owners.

Mr. Leasor said the \$9.4 million collected to date represents 100% of the \$9.4 million budgeted for the current 2016 program year. He said similarly, so far for program year 2016, fees had been received for 100% of the 20,200 tanks budgeted.

Chairman Rocco asked whether the six percent of owners that have not paid their fees are currently operating their tanks and whether BUSTR is notified when owners' fees become delinquent. Mr. Leasor explained that the operational status of the unpaid tanks is not known and Executive Director Richmond confirmed that copies of the Orders Pursuant to Law are provided to the State Fire Marshal. Chairman Rocco suggested that perhaps there is a way for the Board's staff to work with BUSTR to identify and address sites where the owners are currently operating their tanks and simply refuse to pay and to also find a resolution for any tanks that are abandoned.

Mr. Hills agreed it would be beneficial for the agencies to work together and said outstanding Fund fees associated with abandoned tanks has become an issue for the Abandoned Gas Station Cleanup Grant Program because applicants are requesting grant monies to pay the outstanding Fund fees. Ms. Richmond said she had discussions with Development Services and BUSTR's legal counsel and believes the issue has been addressed. She explained that any outstanding prior owner fees associated with tanks being removed through the grant program do not need to be paid, because a Certificate of Coverage cannot be issued for abandoned tanks. She pointed out that the owner removing tanks through the grant program would be assessed fees for the period of time they own the tanks, but noted that even these fees could be settled through the appeal process.

Historical UST and Owner Statistics

Mr. Leasor said that, at the previous meeting, statistics concerning the historical number of tanks and the number of tank owners was requested. He said this information was compiled and presented in two graphs and included in the Board members' notebooks. He said the first graph shows the historical number of tanks billed, budgeted and paid by program year, and the second graph shows the number of owners billed and the number of owners paid by program year.

Mr. Leasor pointed out that, in program year 2009, fees were billed for 22,600 tanks and this has decreased annually with 21,179 tanks being billed in program year 2015. He said similarly there has been a downward trend in the number of tank owners.

Chairman Rocco asked why the number of tanks billed is higher than the number of tanks budgeted. Mr. Leasor said for budgeting purposes he looks at historical payment data which shows that fees are typically paid for about 96% of the billed USTs and the budget estimate is built using that percentage. He pointed out that the lines showing the number of tanks for which fees were paid and the number of tanks budgeted match fairly closely but noted that in program year 2015, the number of tanks budgeted was 200 tanks fewer than the number for which fees were actually paid. He said he suspects the number of tanks budgeted for program year 2016 may be similarly under budget.

Pro-Forma Operating Statement

A Pro-Forma Operating Statement was distributed to the Board members, and Chairman Rocco called upon Mr. Leasor to present it to the Board.

Mr. Leasor explained that the statement was prepared assuming there would be no increase or decrease to the annual per-tank fees and other assumptions concerning fee revenue and expense projections through fiscal year 2021.

Mr. Leasor said the most recent analysis performed for the year ending June 30, 2016, estimated the claim liability to be \$35.3 million. He noted this was an increase over the prior year estimate of \$31.6 million. He said the pro-forma financial statement projects an unobligated account ending balance of \$23.4 million and the claim liability will reduce to about \$5.9 million at the end of fiscal year 2021. He pointed out the statement also includes the refunds payable liability. He said the accrued refund liability was \$1.6 million as of June 30, 2016, and the amount of refunds paid is expected to increase with the hiring of a refunds processor.

Mr. Geyer asked why the fiscal year 2017 tank fee revenue is projected to decrease \$700,000 from the 2016 fee revenue. Mr. Leasor explained that the projection assumes that 70% of the program year fees will be collected prior to July, but in 2016, a higher percentage of tank owners paid their fees prior to July 1.

Chairman Rocco said the financial projections show the Fund to be in good shape for the next five years but noted that some unknown variables could impact the estimates including the subrogation litigation with major oil companies as well as an increase in UST system upgrades that may be needed to address compatibility issues with higher blend fuels. Chairman Rocco said the financial projections would be discussed further during his presentation of the finance committee report.

Compliance and Fee Assessment Report:

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

Ms. Esquivel reported that, since July 1, 2016, refunds totaling \$3,300 had been paid to four owners and a total of \$19,550 was used to offset prior years' outstanding fees. She said the combined amounts total \$22,850, which represents 10% of the \$225,000 refund goal set for the 2016 program year. She said the amount of refunds pending totals \$1,400,405.

Ms. Esquivel said, as of October 31, 2016, a net total of \$56,887 had been collected by the Attorney General's Office and Special Counsel. She said 22 accounts totaling \$129,035 had been certified to the Attorney General's Office for collection since July 1, 2016.

Ms. Esquivel reported, as of November 8, 2016, three Orders Pursuant to Law were under appeal. She said one appeal is in settlement negotiations and two hearings had been scheduled. She said one Determination to Deny a Certificate of Coverage was under appeal and information to support the appeal is expected to be provided.

Ms. Esquivel said that three Ability to Pay Applications are pending review. The Ability to Pay program allows former UST owners experiencing financial difficulty to apply for and receive a determination of their ability to pay delinquent fees.

Ms. Esquivel reported that Applications for Certificates of Coverage were mailed to 3,418 owners for program year 2016. She said 2,861 Certificates of Coverage had been issued as of November 8, 2016. She said there are 266 Applications for Certificates of Coverage currently in process, 20 unresolved Pending Denials and 11 unresolved Determinations to Deny a Certificate of Coverage.

Ms. Esquivel stated that there are 50 uncashed refund checks that total \$38,897. She said there is \$33,665 in refunds pending for 27 owners from whom more information has been requested.

Claims Reports:

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

Ms. Duann said, as of November 1, 2016, the total maximum liability of in-house open claims is \$30 million. She said that, using the historical claim payout ratio of 75%, the actual anticipated claim liability of unpaid in-house claims is about \$22.5 million.

Ms. Duann said the staff is currently reviewing and settling claims received in the month of June and in general, claims are being reviewed within five months of being received. She said there are currently approximately 300 above deductible claims that can be processed by the staff.

Ms. Duann reported that, as of November 1, 2016, there were 18 claim settlement determinations under appeal. She said eight of the appellants have provided additional information and this information is under review. She said that, for six of the appeals, responses were issued concerning the additional information provided, and we are awaiting notification from these appellants about how they wish to proceed. She said no supportive information has been received for the three remaining settlement appeals.

Ms. Duann reported that, during the last four months, an average of 57 claims per month were received, and the staff settled an average of 61 claims per month. She said that, before the end of the year, several below deductible claims submitted for sites that had been issued an NFA more than a year ago will be closed.

Ms. Duann said that, for the last four months, the average claim payout ratio was about 74.4% of the net value, and the average per claim payout was about \$9,300. She said the average of claimed costs that were disallowed was 20.2% of the face value. She said these numbers are consistent with the last few years' statistics.

Ms. Duann stated that, during the last four months, 23 eligibility applications were received and 25 eligibility determinations were issued. She said 14 applications were approved, one was denied due to late filing, and the remaining ten were denied due to no release being demonstrated or no corrective action work being required by BUSTR. She said, as of November 1, 2016, a total of 25 eligibility applications were pending review, and five determinations to deny eligibility were under appeal. She said information has been received for one appeal and it is under review. She said information to support the remaining four appeals is expected.

Ms. Duann reported that 41 cost pre-approval requests had been received in the months of July through October and 48 cost pre-approval notifications were issued. She said, as of November 1, 2016, a total of 28 requests for cost-pre-approval were pending review.

Finance Committee Report:

Chairman Rocco said that prior to the Board meeting the Finance Committee met to review the Fund's five-year financial projections and to discuss the annual per-tank fee and deductible amounts for the upcoming program year. He said that, as a result of these discussions, the committee recommended to the Board that no change to the per-tank fee or deductible amounts be implemented for the upcoming fiscal year.

Chairman Rocco asked if there were any questions or comments, and there were none. He then requested a motion to make no changes to the annual fees. Vice-Chairman Hull so moved and Mayor Falconi seconded. A vote was taken and all members voted in the affirmative. The motion passed.

Director Richmond noted that the Board must also formally take action to make no changes to the deductible amounts and Chairman Rocco requested a motion to adopt the recommendation of the Finance Committee to make no changes to the per-tank fees or deductible amounts for program year 2017. Vice-Chairman Hull so moved and Mr. Bryant seconded. A vote was taken and all members voted in the affirmative. The motion passed.

Chairman Rocco said the committee reviewed the Board's investment and collection policies and is recommending no changes to either policy.

Unfinished Business:

Suspending Claims Review

Chairman Rocco called upon Starr Richmond, Executive Director, to discuss the suspension of review and settlement of claims.

Ms. Richmond explained that in June 2016, OPMCA (Ohio Petroleum Marketers & Convenience Store Association) submitted a letter to the Board concerning the January 2015 decision to suspend the review and settlement of claim reimbursement applications when the Board has filed a complaint in litigation against a responsible party. She said at the September meeting, Jennifer Rhoads, OPMCA's President and CEO, came before the Board and discussed how the decision was impacting its membership.

Ms. Richmond said that a responsive letter had been issued to OPMCA and a copy of this letter was included in the Board members' notebooks. She said the letter included relevant excerpts of Board meeting minutes and explained that the Board extensively discussed the concerns raised by OPMCA. She said the letter states that the Board would continue to monitor the situation and also reminded OPMCA's membership that claim reimbursement applications must still be timely filed in order to be considered for reimbursement once the suspension is lifted.

Vice-Chairman Hull stated that, if a party being impacted by the decision brings a solution to the Board that addresses all of the Board members' concerns, such a solution would be open for discussion. Mr. Geyer asked whether the waiver of the voluntary payment defense discussed at the January 2015 meeting is still a viable option that would allow for claims to be paid. Vice-Chairman Hull said it is an option, but it is incumbent upon the party wanting to waive its voluntary payment defense to investigate the issues involved and put forth a formal proposal that the Board can consider and act upon.

Office Lease

Chairman Rocco said the Board's current lease agreement expires in June 2017 and there are no renewal options for the lease. He said the LeVeque's owners have proposed a new rental rate of \$17.50 per square foot for the current space and noted that this is a significant increase over the current rate of \$13.67 a square foot. He said at the last meeting the Board asked the staff to look into alternative options in both the downtown area as well as locations north of downtown. He then called upon Ms. Richmond to present the information that had been collected.

Ms. Richmond directed the members to a listing of locations that she and Ms. Esquivel had found through internet searches, commercial real estate agents and the Real Estate Services section of DAS (Department of Administrative Services). She cautioned that the rates presented might not be the full service cost of a lease. She said when comparing the rate proposed by the LeVeque to other downtown locations it seems to be competitive. She noted the major problem for all locations in the downtown area is that parking has become limited. She said that, for some buildings, the parking is inconvenient and some have no parking options available at all.

Ms. Richmond said that, looking outside of the downtown area, the square footage rate drops and noted there are parking lots adjacent to the buildings so there would be no additional parking charges. Chairman Rocco stated that, when the parking costs are added in, the square footage rate at the LeVeque would be over \$20. He commented that, if the Board decides to stay in the downtown area, it doesn't make sense to move to another building.

Mr. Hills noted that the Department of Commerce is relocating some of its divisions to the north side of Columbus and said there may be an ability to move into the same building and negotiate similar terms. Vice-Chairman Hull suggested the contract be negotiated with a six-year commitment and noted the landlord may be willing to assume some of the relocation or buildout costs if the commitment is longer than two years.

Chairman Rocco recommended that an office brokerage professional be brought in to explore leasing options and establish the actual lease costs for the Board to consider at its January meeting. He also asked that an estimate of the relocation expenses be prepared by the staff. After some further discussion, Vice-Chairman Hull made a motion to authorize the Chairman to enter into an agreement with a broker for their services and Mr. Geyer seconded. A vote was taken and all members voted in the affirmative. The motion passed.

New Business:

Subrogation – The Hartley Company vs. Jones & Frank
Claim # 4882-0013/07/10/14, Facility – Troy Gulf Station

Chairman Rocco called upon Jennifer Croskey, Assistant Attorney General, to discuss a subrogation claim.

Ms. Croskey explained that the issue concerns a petroleum release that occurred at a Gulf station in Troy, Ohio, owned by the Hartley Company. She said the release is alleged to have occurred as a result of a faulty equipment repair performed by a UST maintenance company known as Jones & Frank. She said the parties are in litigation in Federal court, and they had been ordered to mediate by the judge in the case. She said because there is a potential settlement in the case, it is recommended that the Board authorize the Chairman to participate in the negotiations in order to assist in the resolution.

Chairman Rocco said there was a substantial product loss and the cleanup costs are estimated to be between \$750,000 and \$1.2 million. He said if Jones & Frank were found to be liable, the Fund would not be expected to pay for the cleanup, and the goal of participating in the discussions is to ensure that the Fund is treated fairly. Mr. Hills asked if the Board is a party in the case and Chairman Rocco said the Board has not intervened to become a party in the case and explained that any negotiation and settlement would only be with the Hartley Company.

Following a brief discussion, Vice-Chairman Hull moved to authorize the Chairman to enter negotiations on behalf of the Board and Mr. Geyer seconded. Chairman Rocco recommended the motion authorize the Chairman and Executive Director in consultation with the Assistant Attorney General to negotiate and enter into a settlement agreement. Vice-Chairman Hull moved to amend his motion as recommended by the Chairman and Mr. Bryant seconded. A vote was taken and all members voted in the affirmative. The amended motion passed.

Hardship Applications

Chairman Rocco called upon Ms. Richmond to present the hardship applications.

Ms. Richmond stated that the Board's rule 3737-1-08 provides for an owner experiencing financial hardship to apply for hardship status with the Fund. She said granting hardship status allows for the acceleration of the review of the claims submitted by the owner. Ms. Richmond noted that granting hardship status does not increase the amount of reimbursement to the tank owner. She stated that accelerating the review of the claim reduces the financial burden the owner would experience if the claims were reviewed and settled in the normal course of business. She said, once granted, the hardship status remains in effect for a one-year period and, at that time, the owner may reapply for hardship status.

Ms. Richmond stated that, in determining hardship status, the application and a minimum of two years of income tax records are reviewed. She said, in addition, a U.S. Environmental Protection Agency (U.S. EPA) financial capacity test is used to evaluate the owner's cash flow and determine whether the owner is able to carry debt, in which case, the owner could finance the costs of corrective actions over time.

Claim # 4808-0001/02/02/90, Owner – Harold Saurers d/b/a Rod Kick Marathon

Ms. Richmond stated that Harold Saurers is the responsible person for a 1990 release at 1020 ½ Spruce Street in Wooster, Ohio. She said this is his fifth request for hardship status and, to date, the Fund has reimbursed \$109,000 for corrective actions for this release.

Ms. Richmond said there are currently two unsettled claims in-house totaling \$23,600 and the estimated corrective action costs for the next year are \$135,000.

Ms. Richmond said that, based on the information provided in the application, Mr. Saurers' annual household expenses exceed his annual income by \$27,000, which is from a fixed annuity and social security benefits. She said he is the sole shareholder in a corporation, Wooster Ignition; however, the corporation has operated at a slight loss in recent years.

Ms. Richmond said that, based on the U.S. EPA financial capacity test, it is highly unlikely that Mr. Saurers has the ability to afford the corrective action costs anticipated to be incurred in the next 12 months.

Ms. Richmond recommended the Board approve the application and grant hardship status to Mr. Saurers. Vice-Chairman Hull so moved and Mr. Bryant seconded. A vote was taken and all members voted in the affirmative. The motion passed.

Claim # 10574-0001/05/28/15, Owner – Thomas Brewster

Ms. Richmond said Thomas Brewster is the responsible person for a 2015 release that occurred at 1937 Tennyson Road in Piketon, Ohio, and the release was discovered during the removal and replacement of USTs at the facility. She said this is his second request for hardship status and, to date, the Fund has reimbursed about \$11,000 for corrective actions for this release.

Ms. Richmond said there is currently one unsettled claim in-house totaling \$10,800 and the cost of corrective action work expected to be conducted over the next 12 months is estimated to be \$25,000.

Ms. Richmond pointed out that the amounts listed under item #15 of the application as businesses that owe Mr. Brewster more than \$500 should be listed as debt under item #14 of the application. She noted the properties listed on the application include two farms with survivorship deeds that are now operated by his sons, and he receives no income from these properties. She said the other properties are adjacent to the facility and include a restaurant, which closed over a decade ago, and a storage facility from which he receives \$2,400 annually in rent.

Ms. Richmond stated that Mr. Brewster owns and operates the convenience store with annual sales of \$2 million, and his net income from the convenience store and his social security benefits totals \$46,000 annually, which exceeds his household living expenses. She said that, according to the application Mr. Brewster has a total of \$105,000 in two checking accounts.

Ms. Richmond said a claim for which hardship has been granted is generally reviewed within 30 days; however, it could take up to 90 days to review those claims. She noted that claims without hardship status are currently being processed within five months of receipt. She recommended, given Mr. Brewster's current liquid assets, net worth, and gross business income as well as the current claims processing time, that the Board deny Mr. Brewster's application for hardship status.

Chairman Rocco asked whether Mr. Brewster had previously been granted hardship status and Ms. Richmond stated that he had been granted hardship status once before. Vice-Chairman Hull asked if the U.S. EPA model indicates he can afford the corrective actions, and Ms. Richmond confirmed that

the financial test indicates Mr. Brewster is in a financial position where he could afford the corrective action costs to be incurred within the next 12 months.

Vice-Chairman Hull, acknowledging the current claims processing time and the results of the financial capacity test, made a motion to accept the recommendation of the Executive Director. Mr. Stephenson seconded and a vote was taken to deny hardship status. All members voted in the affirmative. The motion passed.

Claim # 19104-0001/10/30/14, Owner – American United Oil Inc.

Ms. Richmond said American United Oil Inc. is the responsible party for a 2014 release that occurred at 342 East Main Street in Ashland, Ohio. She said, as an owner of 50% of American United Oil Inc., Steve Najar is requesting the Board grant hardship status to American United Oil Inc. She said this is the second request for hardship status, and, to date, the Fund has reimbursed \$202,000 for corrective actions for this release.

Ms. Richmond said American United Oil Inc. currently has one unsettled claim in-house with a face value of \$14,200 and the estimated corrective action costs for the next year are \$250,000. She said this cost includes the purchase and installation of a DPE (dual phase extraction) remediation system and first year of operation.

Ms. Richmond said the real estate is not reported on the application, but American United Oil does own the facility and has since 2001. She said the tanks were removed and replaced in the summer of 2015. She said the corporation's net income is \$29,000 annually, which is approximately 12% of the anticipated costs for the next year.

Ms. Richmond said that, based on the information provided in the hardship application and IRS tax forms, the U.S. EPA financial model for corporations estimates a less than 50% probability the corporation can afford \$250,000 in corrective action costs.

Ms. Richmond recommended the Board approve the application and grant hardship status to American United Oil Inc. Vice-Chairman Hull so moved and Mr. Geyer seconded. A vote was taken and all members voted in the affirmative. The motion passed.

Claim # 22239-0001/08/03/15, Owner – Harjasneet, LLC

Ms. Richmond said Harjasneet, LLC is the responsible party for a 2015 release that occurred at 4871 Dixie Highway in Fairfield, Ohio, when a lightning strike hit the tanks and caused them to explode. She said, as a member of the LLC, Harmit Singh is requesting the Board grant hardship status to the LLC. She said this is his second request for hardship status and, to date, the Fund has reimbursed just under \$106,000 for corrective actions for this release.

Ms. Richmond said there is currently one unsettled claim in-house with a face value of \$16,000 and the cost of corrective action work expected to be conducted over the next 12 months is estimated to be \$30,000.

Ms. Richmond noted the application provided no financial information, and in order to provide this information, the income tax records were included in the notebooks. She said the value of the building

and land is \$480,000 and there is a mortgage balance of \$141,000. She said the property is not currently in operation, and the LLC's only source of revenue is \$34,100 in rent paid by the tenant of the facility. She said this revenue is then turned over to pay the mortgage on the property.

Ms. Richmond said that, based upon the information provided in the hardship application, the U.S. EPA financial model for corporations estimates a less than 50% probability that the LLC can afford the \$30,000 in corrective action costs.

Ms. Richmond recommended the Board approve the application and grant hardship status to Harjasneet, LLC. Vice-Chairman Hull so moved and Mr. Pisula seconded. A vote was taken and all members voted in the affirmative. The motion passed.

Certificates of Coverage – Ratifications:

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

Ms. Richmond said the lists behind Tabs 9 and 10 are listings of facilities that, since the September Board meeting, had been issued or denied a program year 2015 or 2016 Certificate of Coverage.

Ms. Richmond said the process used to review the fee applications and issue or deny a Certificate of Coverage includes a review for completeness to determine full payment was received; financial responsibility for the deductible has been demonstrated; and the owner has certified with his signature that he is in compliance with the State Fire Marshal's rules for the operation and maintenance of petroleum underground storage tanks. She said, if these requirements are met and if the tanks existed in previous years, a Certificate for the subject tanks has been issued to the owner in at least one of the prior two years, then a Certificate of Coverage is issued.

Ms. Richmond explained that, if deficiencies or compliance issues are identified, notice is provided to the owner in accordance with the Board's rules. The owner is provided 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. Ms. Richmond said that, throughout this process, the Board's staff works with the owner to correct the fee statement record and, if necessary, refers the owner to BUSTR to correct the registration record.

Ms. Richmond requested the Board ratify her actions with respect to the issuance of the 2015 program year Certificates of Coverage for the 30 facilities included on the list behind Tab 9.

Vice-Chairman Hull moved to ratify the issuance of the 2015 Certificates of Coverage for the facilities listed. Mr. Geyer seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Richmond requested the Board ratify her actions with respect to the denial of the 2015 program year Certificates of Coverage for the 15 facilities included on the list behind the Tab 9 green divider page.

Vice-Chairman Hull moved to ratify the denial of the 2015 Certificates of Coverage that were listed. Mr. Bryant seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Richmond requested the Board ratify her actions with respect to the issuance of the 2016 program year Certificates of Coverage for the eight owners of 11 facilities included on the list behind Tab 10. Vice-Chairman Hull so moved and Mr. Bryant seconded. A vote was taken and all members were in favor. However, Mr. Hills pointed out that 290 facilities were listed and Chairman Rocco asked for a substitute amendment.

Ms. Richmond requested the Board ratify her actions with respect to the issuance of the 2016 program year Certificates of Coverage for the 152 owners of the 290 facilities included on the list behind Tab 10.

Vice-Chairman Hull moved to ratify the issuance of the 2016 Certificates of Coverage for the facilities listed. Mr. Hills seconded. A vote was taken and all members were in favor. The motion passed. Chairman Rocco clarified that the new motion replaced the original motion.

Ms. Richmond requested the Board ratify her actions with respect to the denial of the 2016 program year Certificates of Coverage for the 11 facilities included on the list behind the Tab 10 green divider page.

Vice-Chairman Hull moved to ratify the denial of the 2016 Certificates of Coverage that were listed. Mr. Bryant seconded. A vote was taken and all members were in favor. The motion passed.

Executive Session:

Chairman Rocco requested a motion to enter into executive session with counsel pursuant to Ohio Revised Code 121.22(G)(3) to discuss matters of pending or imminent court action. Vice-Chairman Hull so moved. Mr. Hills seconded. Chairman Rocco called for a roll call. The following members voted in the affirmative: Messrs. Bryant, Falconi, Geyer, Hills, Hull, Pisula, Stephenson and Rocco. There were no nays. The motion passed.

During the executive session Chairman Rocco requested to be recused from the executive session and the meeting was turned over to Vice-Chairman Hull.

Reconvene Meeting

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

Vice-Chairman Hull made a motion to authorize the filing of a complaint in the matter currently pending against the Shell Oil Company when the appropriate documents are approved by the Executive Director, Vice-Chairman and Assistant Attorney General. Mr. Stephenson seconded. A vote was taken and all members were in favor. The motion passed.

Confirm Next Meeting and Adjourn:

Chairman Rocco said that the next Board meeting will be held on Wednesday, January 18, 2017, at 10:00 a.m.

Chairman Rocco said that, given the decision to make no changes to the fee or deductible amounts for program year 2017, the meeting that had been tentatively scheduled for February 8, 2017, would not be necessary.

Mr. Hills made a motion to adjourn the meeting and Mr. Bryant seconded. All members were in favor.