



Petroleum Underground Storage Tank Release Compensation Board

P.O. Box 2280 • Westerville, Ohio 43086-2280
Phone: (614) 752-8963 • Fax: (614) 752-8397
www.petroboard.org

MINUTES OF THE 186th MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD November 18, 2020 – 10:00 a.m.

BOARD MEMBERS IN ATTENDANCE

Jim Rocco
John Hull
Steve Bergman
Don Bryant
Ron Falconi
Scott Fleming

EX-OFFICIO MEMBERS IN ATTENDANCE

Verne Ord, representing Director Sheryl Creed Maxfield, Ohio Department of Commerce
Donna Waggener, representing Director Laurie Stevenson, Ohio Environmental Protection Agency
Michael Lenzo, representing Robert Sprague, State Treasurer of Ohio

OTHERS IN ATTENDANCE

Starr Richmond	Executive Director, PUSTRCB
Madelin Esquivel	Assistant Director, PUSTRCB
Don Leasor	Chief Fiscal Officer, PUSTRCB
Rick Trippel	Claims Supervisor, PUSTRCB
Jonathan Maneval	Executive Assistant, PUSTRCB
John Hickey	Fiscal Specialist, PUSTRCB
Jahan Karamali	Assistant Attorney General
Doug Darrah	ATC Group Services LLC
Michael Baker	BJAAM Environmental, Inc.
Meagan Leaders	BJAAM Environmental, Inc.
Emily Mackenzie	Pinnacle Environmental Corp.
Jeremy Fultz	Evergreen Resources Group, LLC
Mike Byrne	Speedway LLC

Minutes submitted by:


Jonathan Maneval
Executive Assistant

Call to Order:

Chairman Rocco convened the one hundred eighty-sixth meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, November 18, 2020. Acting under the authority of Section 12 of Amended Substitute House Bill Number 197, effective March 27, 2020, the public meeting was conducted via a ZOOM audio/visual conference call.

The following members were in attendance: Jim Rocco; Steve Bergman; Don Bryant; Mayor Ron Falconi; Scott Fleming; John Hull; Verne Ord, representing Director Sheryl Creed Maxfield, Ohio Department of Commerce; Donna Waggener, representing Director Laurie Stevenson, Ohio Environmental Protection Agency; and Michael Lenzo, representing Robert Sprague, State Treasurer of Ohio. Tom Stephenson was not present.

Minutes:

Chairman Rocco asked if there were any comments or questions regarding the minutes from the September 9, 2020 Board meeting and there were none. Mayor Falconi moved to approve the minutes and Fleming seconded. A vote was taken and all were in favor. The minutes were approved as presented.

BUSTR Report:

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

Mr. Ord reported that one field inspection position is currently vacant and is on hold until the COVID-19 pandemic is over. He said \$65,000 in U.S. Environmental Protection Agency (U.S. EPA) grant funding was provided for a responsible party search program which was finished a few weeks earlier. He said a new responsible party search program was started with \$25,000 in grant funding. He stated that 20 of the responsible party searches had been deemed complete and the intent is for the remaining five searches to be completed before the vendor contracts end in December.

Mr. Ord stated that reports are being electronically submitted to BUSTR environmental specialists. He noted that electronic reports can be directly uploaded into their document viewing system and do not need to be scanned. He said the field inspection staff have been performing on-site inspections. He commented that inspectors are calling ahead of their inspections so that paperwork will be available when they arrive and thus reduce the inspectors' exposure to the general public. Mr. Ord reported that 14 letters of support for communities seeking U.S. EPA Petroleum Brownfields program grant monies were issued. He pointed out that two letters were processed after the BUSTR report was drafted.

Mr. Ord said the dollar amount for the LUST (leaking underground storage tank) grant application for fiscal year 2022 had not been determined by the Office of Underground Storage Tanks (OUST) in Washington, DC. He said he anticipates the number will be provided in February or March and the grant application will then be resubmitted to the U.S. EPA for fiscal year 2022 funding.

Mr. Ord reported that the BUSTR staff is completing the various training requirements for state employees; including ethics and diversity training. He said the Certified Installers and Certified

Inspectors training courses, which are typically held in February and March, may be held towards the end of the fiscal year depending on where things are with the pandemic.

Mr. Ord reported that the “Click Scheduling” program is no longer being used to schedule operational compliance inspections of underground storage tank (UST) facilities. He noted the version of the software was no longer supported and the cost to update it was many times higher than the initial purchase of it. He said they worked with the Department of Administrative Services’ Office of Information Technology staff to generate reports out of the OTTER (Ohio Tank Tracking & Environmental Regulations) database to be used for the scheduling of inspections.

Mr. Ord stated that a U.S. EPA Region 5 all states meeting was held virtually on August 12 and 13, 2020. He noted that Ohio served as the host for the meeting with Steven Krichbaum and Scott Sigler leading it. He explained that the meeting allowed for the states in the region to raise the concerns they have in light of the continued coronavirus pandemic. He noted that Mark Barolo from OUST discussed the U.S. EPA being lenient and working with the states in light of the Covid event.

Mr. Ord said the U.S. EPA had reduced the number of expected NFAs (no further actions) to be issued from 650 to 461. He explained that for a number of years, the Bureau had argued the U.S. EPA’s expectations were unreasonable and they ultimately agreed. Mr. Ord reported that compliance inspections were about 520 inspections behind where they typically would be at this point in the three-year inspection cycle. However, he indicated that they are in pretty good shape in comparison to some states in the region that performed no inspections for five or six months at the start of the pandemic.

Mr. Ord stated that, as of November 6, 2020, there were 21,018 registered USTs and 3,476 owners of [7,065] registered facilities. He said that, since the origination of the program, BUSTR has issued 31,225 NFA determinations.

Chairman Rocco asked if anything significant came out of the all-states meeting. Mr. Ord stated that OUST provided clarification of what can be counted as an operational compliance inspection. He explained that while the paperwork can be reviewed virtually, the inspections of the UST systems must be performed by inspectors physically at the facility. He said there was also a discussion about fuel compatibility with UST systems. He explained that when the ethanol percentage is increased from 10% to 15%, there are many questions about the compatibility of the fuel with the UST, depending upon its age. He said Steven Krichbaum created a pivot table showing the age of the tank population and it appears that around 60-70% of tanks would be deemed incompatible with E15. He said the Bureau is drafting a fact sheet that will allow equipment manufacturers to provide a written statement concerning the equipment compatibility with higher blends of ethanol fuel.

Chairman Rocco asked what inspectors are finding as far as owners meeting the operational compliance requirements. Mr. Ord explained that generally, there are no compliance issues with the main marketers in the state. He said there is a subset of smaller tank owners that do not understand the rules and operational requirements such as performing annual testing of the leak detection equipment and performing tightness tests. He said the inspectors try to educate these owners but some of them simply ignore the requirements and even ignore notices of violation. He noted that many of these owners operate older equipment which requires a lot of attention. He said it is extremely difficult to

get these owners to understand the importance of the requirements. Mr. Fleming asked if the inspection staff will be able to catch up on the 500-600 facility inspections that are behind. Mr. Ord said there is currently an emphasis on compliance inspections and they will likely be able to catch up in the year and a half remaining in the inspection cycle provided the inspection staff is not sheltered at home again due to the pandemic. He added that there is the ability to reset the three-year inspection cycle.

Vice-Chairman Hull asked whether tank manufacturers provide studies or other information to show how they were able to ascertain tank system compatibility with the higher percentage of ethanol. Mr. Ord responded stating the manufacturer must simply provide a written statement concerning the fuel compatibility. Vice-Chairman Hull expressed concern that if there is no contractual nexus and the manufacturer is wrong, there is nothing that can be done. He wondered if an affidavit could be created which would provide legal basis for the manufacturer's attestation to carry some weight and have consequences if it is determined to not be accurate. Chairman Rocco explained that by statute all components of a tank system must be compatible with the product stored. He said that if it is found the product stored was not compatible with the tank system, then reimbursement from the Fund could be denied on the basis that the system was out of compliance at the time of the release. He noted that PEI (Petroleum Equipment Institute) maintains a list of companies and their equipment with respect to fuel compatibility. He commented that the equipment included on the list is assumed to be compatible and is sufficient for purposes of demonstrating compatibility to BUSTR.

Chairman Rocco said another issue is that corrosion is being observed on components of UST systems storing fuels blended with ethanol. He said corrosion is affecting tank gauging floats, sensors on the overfill devices, cables, hinges for flapper valves, and other parts. He said the U.S. EPA recently published a compatibility document concerning UST systems storing biofuel blends in which they expanded the concept of compatibility. He said in order to meet the fuel compatibility requirements, not only does the product stored need to be compatible with the UST material, but the UST system must be functional with the product stored.

Following some further discussion concerning fuel compatibility, Chairman Rocco said that E15 will likely become more prevalent on the market because of its lower price point and the issue of compatibility is something for the Board to keep an eye on going forward.

Financial Reports:

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

Audit Update

Mr. Leasor stated that in September, the independent public accounting firm performing the audit, Kennedy Cottrell Richards, merged with the accounting firm Rea and Associates and it now operates under the name Rea and Associates. He said that in October, paperwork was submitted to the Auditor of State's Office to amend the existing contract on file with the Auditor of State to recognize the firm's name change. He explained that no other portions of the audit contract were changed. He said the five-year contract will continue under Rea and Associates which will end with the fiscal year 2023 audit. He noted that the audit staff on site is the same as the previous year.

Mr. Leasor said the auditors intend to complete the in-house portion of the audit in the upcoming week and they are awaiting the finalized annual financial statements, management discussion and analysis, notes to the financial statements, and the estimate of the claim liability report. He explained that in order to submit the audited financial statements to the Auditor of State by the December 31st deadline, the plan is to email a draft copy of the audited financial statements to the Board members no later than December 11, 2020. He asked the members to review the report and to reply with any questions or comments by December 18, 2020, so they can be addressed prior to the December 31, 2020 filing deadline. He noted that Rea and Associates would present the final audit report at the January Board meeting.

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 17, 2020, the unobligated account balance is \$21.7 million. He said this amount includes \$7.7 million in STAR Ohio (State Treasury Asset Reserve of Ohio) and \$15 million invested in U.S. treasuries and U.S. agency callable bonds. He noted that of the \$16 million in treasury investments the Board has authorized, \$1 million matured at the end of the year. He said the Treasurer's Office is working to make a recommendation for the reinvestment of the \$1 million. He said the obligated account balance for the payment of claims as of November 10, 2020, is \$6.87 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, 2020, 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 \$531,000 and to date, \$6.14 million has been paid for claims for fiscal year 2021. He pointed out that this is 47% of the \$13 million obligated by the Board for the payment of claims for the fiscal year and includes the second of the four payments to a major oil company as a result of a settlement agreement and release previously approved by the Board.

Mr. Leasor reported that operating expenses for the month of September were approximately \$155,000. He said postage expenses were 59% of the amount budgeted. He said this was due to postage fees for the final quarter of fiscal year 2020 being paid in August. He said these charges include fees for the annual fee statement mailing, which is sent by certified mail. He said that telephone expense was at 26% of the amount budgeted. He noted that this includes internet access, VoIP service, a cell phone, renewal of the web address registration, and a staff messaging subscription. He said that legal and professional expenses are at 11% of the amount budgeted. He said, in the upcoming months, he anticipates incurring legal and professional expenses for the transition to using Microsoft Teams and additional expenses related to the document management project. He said other expenses are at, or below, where they should be at this time in the fiscal year.

Fee Statement Statistics

Mr. Leasor said as of October 31, 2020, the per-tank fees collected for the current 2020 program year were just above \$8.2 million, which represents 99% of the billed amount. He said that between July 1, 2020, and October 31, 2020, approximately \$115,000 was collected for prior years' fees, net of refunds paid of \$12,750.

Mr. Leasor said, for the 2020 program year, 15,412 tanks were billed at the standard deductible (\$55,000) per-tank fee and 5,317 tanks were billed at the reduced deductible (\$11,000) per-tank fee. Mr. Leasor said as of October 31, 2020, the fees had been paid at the standard deductible rate for 14,582 tanks and at the reduced deductible rate for 5,485 tanks. He said fees for a total of 20,067 tanks had been paid by 3,057 owners. He said this compares to fees being paid for 20,029 tanks by 3,046 owners for the same period of time in the prior year.

Mr. Leasor said of October 31, 2020, fees had been paid for a total of 20,374 tanks by 3,105 owners for the previous 2019 program year.

Mr. Leasor said the \$8.3 million collected to date represents 99.4% of the \$8.37 million budgeted for the 2020 program year. He said so far for program year 2020, fees had been received for 20,067 USTs, which is 99.2% of the 20,220 tanks budgeted.

Chairman Rocco commented that the increase in the number of owners selecting the reduced deductible may be an indication that owners may be closing their sites and pulling their tanks.

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, as of October 31, 2020, refunds totaling \$12,750 had been paid to 10 owners for program year 2020 and noted the amount of pending refunds totals \$1.5 million. She said for program year 2020, \$2,000 of the pending refunds had been used to offset outstanding fees. She said as of October 31, 2020, the fees collected by the Attorney General's Office and Special Counsel less collection costs totaled \$39,117. She said that no accounts had been certified to the Attorney General's Office for collection since July 1, 2020. She said a certification of accounts with unpaid prior years' fees will be completed soon and the unpaid 2020 program year fees will likely be sent for collection in March 2021.

Ms. Esquivel said there are eight Orders Pursuant to Law currently under appeal and information to support the objections is expected for seven appeals and information has been received for the other appeal and it is under review. She said that no Determinations to Deny a Certificate of Coverage were under appeal.

Ms. Esquivel stated that no 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 as of November 6, 2020, Certificates of Coverage have been issued to 2,627 owners for program year 2020. She said there are 431 Applications for Certificates of Coverage currently being processed. She said for the 2020 program year, seven Pending Denials had been issued but no Determinations to Deny a Certificate of Coverage had been issued. She commented that the issuance of the Pending Denials will be ramping up as all of the Applications with no issues had been processed.

Ms. Esquivel stated that there are 31 uncashed refund checks totaling \$23,308. She said there are eight owners with pending refunds totaling \$32,096 to whom letters have been sent notifying them that more information is needed before the refund may be issued. She said there are 34 owners with pending refunds totaling \$60,745 for which information had been requested through two notifications, but no responses have been received.

Claims Reports:

Chairman Rocco called on Rick Trippel, Claims Supervisor, to present the claims reports.

Mr. Trippel reported as of November 2, 2020, the total maximum liability of in-house open claims is just under \$10.4 million. He said that using the claim payout ratio of 77.1%, which is the average ratio of the past five years, the actual anticipated claim liability of unpaid in-house claims is about \$8 million. He said the anticipated claim liability of unpaid in-house claims is about \$8.4 million using a payout ratio of 80.7%, which was the payout ratio for the 2019 program year.

Mr. Trippel reported that, as of November 2, 2020, a total of 583 claims with a total face value above the deductible amount were pending review. He stated that, as of November 2, 2020, a total of 28 claim settlement determinations were under appeal. He explained that these pertain to only seven release sites. He said that 16 appeals are for determinations for one release, six appeals are for another release, and two are for a third release. He said the remaining four appeals are for claim settlement determinations pertaining to four separate releases. He noted that for 19 of the appealed determinations, the staff is waiting for information to support the appeals to be provided. He noted that the staff is currently reviewing claims that were received prior to June 2020.

Mr. Trippel said that, in the months of July through October, 203 claims were received and a total of 202 claims were settled or closed. He noted that 11 of the closed claims were for sites with an NFA and the face value of the claims was below the deductible amount. He stated that the average payout per claim application was \$11,954 and the average claim payout was 79.5% of the net value (face value – deductible). He said on average 17.7% of the claim face value was disallowed.

Mr. Trippel said that, during the months of July through October, 27 eligibility applications were received and 19 eligibility determinations were issued. He said of these eligibility determinations, 15 were approved and four were denied. He said that of the denied applications, one was denied for no valid Certificate of Coverage, one was denied for out-of-compliance USTs, and the other two were denied for no corrective action work being required by BUSTR. He said as of November 2, 2020, a total of 108 eligibility applications are pending review. He noted that nine applications are

unreviewable until the necessary reports are received and more information has been requested for six of the applications. He noted that six eligibility determinations are currently under appeal.

Mr. Trippel reported that 44 requests for cost pre-approval had been received during the months of July through October. He said the cost pre-approval requests included 11 new remedial action plans; 18 annual requests; four mandatory IRA (interim response actions), tier 3, or monitoring/calibration plans; seven notifications of cost exceedances; and four voluntary submittals. He said as of November 2, 2020, a total of 55 cost pre-approval notifications had been issued and 37 cost pre-approval requests are 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 next program year.

Chairman Rocco explained that the committee reviewed pro-forma operating statements, which provided projections through fiscal year 2025. He said the projections were created using the current fee structure, which is \$350 per tank for coverage with the \$55,000 deductible and \$550 per tank for the \$11,000 deductible coverage. He said that assuming trends continue as they have in the last few years, the projections indicate there will be sufficient funds to cover operating expenses and retain a reasonable unobligated ending balance. He said that based on the committee's review of the projections, the recommendation is to leave the per-tank fees and deductibles the same for the upcoming program year. He then requested a motion to adopt the recommendation of the Finance Committee to make no changes to the per-tank fees or the deductible amounts for program year 2021. Vice-Chairman Hull so moved and Mr. Fleming seconded. The Chairman asked if there were any questions or discussion and there were none. A vote was taken and the motion passed. Mr. Lenzo was not present for the vote.

Chairman Rocco mentioned that during the meeting, the committee reviewed various Board policies but no changes to the policies were recommended. He noted that a number of the policies had been updated in June 2020.

Certificates of Coverage – Ratifications:

Chairman Rocco called on Madelin Esquivel, Assistant Director, to present the lists of owners who have either been issued or denied a Certificate of Coverage for ratification by the Board.

Ms. Esquivel 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. She said if a Certificate has not been issued in one of the prior two years and the tanks existed during those years, the owner must comply with rule

3737-1-04.1 by demonstrating the tanks are in compliance with the Fire Marshal's rules for the operation and maintenance of USTs.

Ms. Esquivel stated that, if the requirements are met, a Certificate is issued. She said if the requirements are not met, the Certificate is denied. She explained that if the Certificate is denied, the owner is provided with an opportunity to appeal the denial. She said that, throughout the denial process, the Board's staff works directly with the owner to resolve any deficiencies. She stated that all processes within the Board's rules and Revised Code were followed to make a determination to issue or deny the Certificates of Coverage.

Ms. Esquivel requested the Board ratify the Director's actions with respect to the issuance of the 2019 program year Certificates of Coverage for the 22 facilities included on the program year 2019 Certificates issued list.

Vice-Chairman Hull moved to ratify the issuance of the 2019 Certificates of Coverage for the facilities listed. Mr. Fleming seconded. A vote was taken and the motion passed. Mr. Lenzo was not present for the vote.

Ms. Esquivel requested the Board ratify the Director's actions with respect to the denial of the 2019 program year Certificates of Coverage for the 21 tanks located at the seven facilities included on the program year 2019 Certificates denied list.

Vice-Chairman Hull moved to ratify the denial of the 2019 Certificates of Coverage that were listed. Mr. Bryant seconded. A vote was taken and the motion passed. Mr. Lenzo was not present for the vote.

Ms. Esquivel requested the Board ratify the Director's actions with respect to the issuance of the 2020 program year Certificates of Coverage for the 966 owners of the 2,091 facilities included on the program year 2020 Certificates issued list.

Vice-Chairman Hull moved to ratify the issuance of the 2020 Certificates of Coverage for the facilities listed. Mr. Fleming seconded. A vote was taken and the motion passed. Mr. Lenzo was not present for the vote.

Ms. Esquivel stated that no determinations denying a 2020 program year Certificate of Coverage were issued since the September meeting.

Executive Session:

Chairman Rocco stated that an executive session was needed and briefly explained the process for the Board to privately participate in the executive session using ZOOM. The Chairman stated that the public meeting would reconvene following the executive session.

The Chairman then 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. Mayor Falconi so moved and Mr. Ord seconded. The Chairman called for a roll call. The following members voted in the affirmative: Ms. Waggener and Messrs. Bergman, Bryant, Fleming, Falconi, Hull, Ord, Lenzo, and

Rocco. There were no nays. The motion passed. Messrs. Fleming and Lenzo did not participate in the executive session.

Reconvene Meeting

The Board adjourned from the executive session and reconvened the public meeting. Messrs. Fleming and Lenzo were no longer in attendance.

Confirm Next Meeting and Adjourn:

Chairman Rocco stated that the next Board meeting will be held on Wednesday, January 13, 2021, at 10:00 a.m.

Chairman Rocco explained that given the Board's decision to make no changes to the fee or deductible amounts for program year 2021, the meeting that had been tentatively scheduled for February 10, 2021, would not be needed. He commented that the M-PACT tradeshow was moved to September of 2021, and is scheduled to take place on the same date as the Board's September meeting. He said the Board can decide later whether that meeting presents a conflict or not.

The Board's Assistant Attorney General, Jahan Karamali, noted that legislation was introduced earlier in the week which included a provision to extend the temporary authorization allowing for public bodies to conduct meetings virtually. She explained that the current authorization is set to expire on December 1, 2020, and the proposed legislation would extend the ability to conduct virtual meetings until July 1, 2021. She noted that it includes an emergency clause meaning it would become effective immediately rather than after 90 days had passed. She stated that she would keep the Board's staff apprised whether the January meeting can be conducted as a virtual meeting.

Chairman Rocco asked if there was any other business for the Board to address and there was none. Vice-Chairman Hull made a motion to adjourn the meeting and Mayor Falconi seconded. All members were in favor.

Note: Numbers in brackets [] were incorrectly stated at the meeting. The numbers as written reflect the correct numbers from the report materials provided at the meeting.