



Petroleum Underground Storage Tank Release Compensation Board

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MINUTES OF THE ONE HUNDRED EIGHTEENTH MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD September 12, 2007

BOARD MEMBERS IN ATTENDANCE

Jim Rocco
John Hull
Duane Cable
Brian Epperson
Cheryl Hilvert
Nancy Kister
Tom Kmiec
Don Kuchta
Tom Stephenson


EX-OFFICIO MEMBERS IN ATTENDANCE

Lori Stevens, representing Kimberly A. Zurz, Director, Ohio Department of Commerce
Chris Geyer, representing Christopher Korleski, Director, Ohio Environmental Protection Agency

OTHERS IN ATTENDANCE

Dave Reeder	Acting Executive Director, PUSTRCB
Starr Richmond	Chief Fiscal Officer, PUSTRCB
Ellen Mitton	Administrative Coordinator, PUSTRCB
Cindy Duann	Environmental Claims Supervisor, PUSTRCB
Rick Trippel	Environmental Claims Analyst, PUSTRCB
Cheryl Hawkinson	Assistant Attorney General
Verne Ord	SFM, BUSTR
Sheryl Knapp	SFM, Testing & Registration
Howard D. Silver	Board Hearing Officer
Andy Shrock	Parsons
Doug Darrah	ATC Associates
Dan Adams	ATC Associates
Mike Shumaker	Speedway SuperAmerica
Suzanne Fisher	McMahon, DeGulis
Megan Lashutka	Ohio Petroleum Council
Jennifer Rhoads	OPMCA
Sandy Ramos	Ramos Law Office
Jay Meglich	Schneider Downs
Roy Lydic	Schneider Downs

Minutes submitted by:


Ellen S. Mitton, Administrative Coordinator

Call To Order:

Chairman Rocco convened the one hundred eighteenth meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, September 12, 2007 at 10:05 a.m. The following members were in attendance: Jim Rocco; John Hull; Nancy Kister; Tom Stephenson; Mayor Don Kuchta; Cheryl Hilvert; Tom Kmiec; Duane Cable; Brian Epperson; Lori Stevens, representing Director Kimberly Zurz, Ohio Department of Commerce; and, Chris Geyer, representing Director Chris Korleski, Ohio Environmental Protection Agency. Mr. Chris Glaros, designee for State Treasurer Richard Cordray, was not in attendance.

Chairman Rocco began the meeting by officially welcoming Mr. Brian Epperson, Corporate Manager Remediation, Speedway SuperAmerica, who has been appointed to the Board to replace Scott Hiser, whose term expired. Chairman Rocco then introduced Ms. Lori Stevens, Acting Chief and Legal Counsel of the Bureau of UST Regulations, representing Ohio Commerce Director Kimberly Zurz. Ms. Stevens is replacing Pete Chace, who resigned from BUSTR.

Chairman Rocco then asked if there were any comments, questions, or discussions regarding the minutes from the June 13, 2007, board meeting and there were none. Ms. Hilvert moved to approve the minutes. Mr. Geyer seconded the motion. A vote was taken and all were in favor.

Election of Officer and Committee Member Appointments

Chairman Rocco entertained motions from the floor for nominations for officers for the upcoming year. Mayor Kuchta nominated Mr. Jim Rocco to continue in his role as Chairman and Mr. Kmiec seconded. Hearing no other nominations, Mayor Kuchta made a motion to close the nominations and to elect Jim Rocco as the Chairman. Mr. Kmiec seconded. A roll call vote followed. The following members voted in the affirmative: Messrs. Rocco, Hull, Cable, Epperson, Kmiec, Kuchta, Stephenson, Geyer, and Mss. Hilvert, Stevens, and Kister. There were no nays and the motion passed. Mr. Rocco will remain as the Chairman.

Mayor Kuchta nominated Mr. John Hull to remain as the Vice Chairman. Mr. Kmiec seconded. Hearing no other nominations, Mayor Kuchta moved to close the nominations and to elect John Hull as Vice Chairman. Mr. Kmiec seconded. A roll call vote followed. The following members voted in the affirmative: Messrs. Rocco, Cable, Epperson, Kmiec, Kuchta, Stephenson, Geyer, and Mss. Hilvert, Stevens, and Kister. Mr. Hull recused himself from the vote. The motion passed. Mr. Hull will remain as Vice Chairman.

Rules Committee

Chairman Rocco asked for Board members to volunteer to participate on the Rules Committee for the next year. Tom Stephenson, Cheryl Hilvert, and Brian Epperson volunteered to be members of the Rules Committee. Chairman Rocco and Vice Chairman Hull will also work on the committee in an ad hoc capacity.

Finance Committee

Chairman Rocco noted that the Finance Committee generally consists of the Chairman, the Vice Chairman and another Board member. He requested Ms. Kister remain on the Finance Committee and she accepted. The Finance Committee members are Chairman Rocco, Vice Chairman Hull and Nancy Kister.

2008 Meeting Dates

Chairman Rocco set the following 2008 meeting dates: January 9; February 6; March 12; June 11; September 10 and November 12, 2008. All meetings begin at 10:00 a.m.

BUSTR Report:

Chairman Rocco called upon Ms. Lori Stevens, Acting Bureau Chief, BUSTR, to present the BUSTR report. Ms. Stevens stated that due to recent changes in the Bureau's administration, the Bureau has been in a transition period. She said that representatives of BUSTR, the State Fire Marshal's office, and the Director of Commerce's office had been meeting to discuss making improvements within the Bureau. She said these representatives would be taking a comprehensive look at all BUSTR procedures in all BUSTR Sections, especially the Enforcement Section. Ms. Stevens said they would also discuss ways to retain more resources or to revise the current system.

She said there would be an in depth review of all open release files and they would prioritize all the files for enforcement. Ms. Stevens said the representatives would be looking for environmental factors as well as the age of the release file.

Ms. Stevens stated that BUSTR had received approval to hire three additional inspectors to assist in ongoing compliance inspections required by the Federal Energy Bill.

Ms. Stevens stated that BUSTR would be amending some regulations of the Ohio Administrative Code section 1301:7-9-7 to comply with recent changes in the federal law. She stated that the UST Advisory Committee (committee) consisting of owners and operators of USTs and other interested parties would be meeting sometime in October.

Ms. Stevens said it would be a matter of a rule revision to meet the requirement of secondary containment rules and the committee would be working on the details of that revision and expect to have it finalized in 2008.

She said prior to the October committee meeting, she would be meeting with the State Fire Marshal and representatives of the Department of Commerce to seek final approval on the proposed "red tag program" that would prohibit delivery if a tank were found to be noncompliant. Ms. Stevens said that once the approval is received, she would begin meeting with the Commerce legislative representatives to begin drafting a proposed statute change.

Ms. Stevens stated she has been in contact with the U.S. EPA, Region V, to keep them apprised of the progress being made in Ohio.

Financial Report:

Chairman Rocco called on Starr Richmond to present the financial report. Ms. Richmond introduced Mr. Jay Meglich and Mr. Roy Lydic, auditors with Schneider Downs. Mr. Lydic presented the final draft of the 2006 Audit Report to the Board. Chairman Rocco recommended that the members read the draft and if there are any questions or comments, contact Ms. Richmond. He noted that the audit would be finalized and forwarded to the Auditor of State by the September 30, 2007 deadline. Mr. Lydic stated that the fieldwork for the fiscal year 2007 audit would begin this fall, which would allow the Board to meet the December 31, 2007, deadline. The Board would then be current with audit reports.

Ms. Richmond stated that the May, June, and July financials were mailed to each member. She asked if there were any questions or comments to be discussed. She noted that a summary of the Board's current financial position is behind Tab 4.

She stated that the current unobligated balance is \$11.1 million. Ms. Richmond said there is an additional \$7.2 remaining in the obligated account set aside for claim settlement payments, and another \$7 million in the debt service account.

Ms. Richmond stated that tank fees collected at the end of July are just over \$13.5 million. She stated that today that number is close to \$14 million.

Reporting on other line items, Ms. Richmond noted that interest income is approximately \$126,000. She said the claims expense at the end of July was at \$900,000; however, as of today, that amount is up to approximately \$2 million of the \$9 million obligated in the budget. The salary, rent, and office supplies line items are right on budget for this time in the year. She noted that temporary services and postage are extremely cyclical and are relatively high during this time of the year, but will even out during the fiscal year. Ms. Richmond said that the advertising cost is not a typical expense and was incurred as a result of the Executive Director posting in the newspaper.

Ms. Richmond referenced the Fee Statement Statistics Spreadsheet and said to date there have been approximately \$14 million in tanks fees collected, representing almost 93% of the \$15.1 million budget for 2007 Program Year. She said this amount represents 21,468 tanks paid by 3,350 tank owners. She said that the Board is a little behind in collections as compared to this time last year. Ms. Richmond noted that could be a result of having one more collection day last year compared to this year. Ms. Richmond stated that these amounts reflect only 2007 fees.

Following a brief discussion, Chairman Rocco requested that, to provide a more concise budget versus collection perspective, future fee statement statistics include prior year fees in the fee revenue. Ms. Richmond indicated the future statistics also would include a break-out of the number of tanks paid at the reduced deductible and the number of tanks paid at the standard deductible.

Ms. Richmond reminded the members that in 2000 the Board began to certify delinquent accounts to the Attorney General's office for collection. She stated that in January 2006 the 9% collection charge for this service was increased to 10% and that the Revised Code was changed to allow the Board to charge that fee back to the debtor for inclusion in the delinquent fees.

Ms. Richmond said that another change in the Revised Code allows the Attorney General's office to legally write-off accounts after a time period of 40 years from the date of certification. The Revised Code gives discretion to agencies to shorten that time period. Ms. Richmond said that the Attorney General's Office has suggested that the Petroleum UST Board shorten that period of time from 40 years to 15 years.

Following a short discussion, Ms. Kister made a motion to enter into a Memorandum of Understanding with the Attorney General's Office, Collections Enforcement Section, to allow uncollectible accounts that the Board forwards for collection to be written off after 15 years instead of 40 years and to authorize the Chairman to sign the Memorandum of Understanding. Ms. Hilvert seconded and a vote was taken. All voted in favor and the motion passed.

Claims Report:

Chairman Rocco called on Cindy Duann, Environmental Claims Supervisor, to present the claims report. Ms. Duann stated that currently the number of open claims is 1,365. She said the total maximum claim liability of in-house unpaid claims is approximately \$27.1 million, and based upon the historical payout at approximately 70%, actual claim liability of unpaid claims is approximately \$19 million. She stated that claims have been submitted for 2,522 sites. She said that 1,592 sites (63%) have no further action (NFA) status and the average claims settlement payout per site is \$64,844. Ms. Duann noted that the average claim payout based on 84 sites that have received NFA status cleaned up exclusively under BUSTR's 1999 and 2005 risk based corrective action rules is \$20,905 per site.

Ms. Duann stated that in the 2006 program year the Board received 971 claim settlement packages with a total net claim value of approximately \$13.2 million. She said that in that same time period, there were 790 claims settled and 48 claims closed. Ms. Duann said the total net value of settled claims is about \$14.2 million with a settlement offer of \$9.4 million.

Ms. Duann said that in the first two months of program year 2007, the Board received 155 claim packages with a total net value of \$2.8 million. She said there were 129 claims settled during the same time period.

Ms. Duann said the Board received 109 eligibility applications and made 103 determinations in program year 2006. Of the 103 determinations, 69 applications had been approved and 34 applications had been denied. She stated that the top two reasons for eligibility denials continue to remain constant. Those denial reasons are: 1) no release from the assured tank system; and, 2) late filing.

Ms. Duann said the Board received 16 eligibility applications in July and August. She said nine applications had been approved and four had been denied during the same time period.

Ms. Duann said that the Board received 27 cost pre-approval applications in July and August and 72 pre-approval applications had been approved, noting that the staff is gaining ground in the backlog of applications. Currently, only 28 pre-approval applications are open.

Old Business

Executive Director Search Update

Chairman Rocco said that the Search Committee, John Hull, Tom Stephenson, and the Chairman, had received over 60 resumes for the position of Executive Director for the Board. He stated that after a lengthy review of all applications, the committee identified six potential candidates and interviewed each of the applicants on Tuesday, September 11, 2007. He stated that at this time, the committee was not in a position to make a recommendation to the members of the Board. Chairman Rocco stated that a copy of all six applicants' resumes had been distributed to the Board members and asked that each member read them to become familiar with the candidates' backgrounds. He said there would be an Executive Session at the November 14, 2007, Board meeting to discuss these applicants, set the salary, and make a recommendation.

Employee Handbook – Inspector General Response

Chairman Rocco called upon David Reeder to discuss the revisions made to the Employee Handbook in response to the recommendations suggested in the June 8, 2007, findings of the Inspector General. Mr. Reeder noted that the committee, Chairman Rocco, Don Kuchta, Cheryl Hilvert, Cheryl Hawkinson, Starr Richmond, Ellen Mitton, and Dave Reeder, met and discussed additions and edits needed to the employee manual as it relates to IT Policy IPT-E.8, addressing personal use of IT resources. The committee also discussed the development of a mandatory training session for new executive directors, board members, and staff to include Department of Administrative Services (DAS) directives and policies, ethics, and executive orders.

Mr. Reeder stated that the Employee Handbook had been finalized with the appropriate revisions and submitted to the Inspector General with a written response from the Chairman. Mr. Reeder said the Inspector General's full report and the Board's response to that report may be obtained from the Office of the Inspector General's website at <http://watchdog.ohio.gov>.

John Hull moved to adopt the Employee Handbook as written dated August 2007; Mr. Geyer seconded. A vote was taken and all voted in favor. The motion passed.

Ethics Training

Mr. Reeder said that pursuant to the Governor's Executive Order 2007-01S, Board members are required to attend ethics training every other year. He stated that an email with a list of upcoming training sessions had been forwarded to all Board members regarding this requirement. Mr. Reeder noted that attached to that email were documents that were to be printed, read, and taken with Board members to the training session of their choice. He added that additional information had been provided today in each Board member's book and should be included with the material for the training sessions. Mr. Reeder said that Ellen Mitton, of the Board's staff, had been designated as the Board's Ethics Officer. Mr. Reeder requested that each Board member select an upcoming training session and advise Ms. Mitton of that date to maintain a current record of Board members and their respective training schedules. Mr. Reeder instructed Board members to contact Ms. Mitton if there were concerns or questions regarding Executive Order 2007-01S.

New Business

Appeal

Larry Haver and Barry Haver, dba Haver Realty, Claim #4908-0001/09/16/92-A

Mr. Howard Silver, Board Hearing Officer, presented his Report and Recommendation to the Board on the appeal of a settlement determination issued by the Director on June 30, 2006. He stated that the site release was located at 225 East High Street in Hicksville, Ohio and was owned by Haver Realty, a partnership of Larry Haver and Barry Haver. Haver Realty purchased the property in 1984 from Standard Oil and the site had been used as a gasoline filling station for approximately eighty years.

Mr. Silver said the property had been leased and used as a BP gasoline station. He said a release was discovered and reported to the Bureau of Underground Storage Tank Regulations (BUSTR) in 1992.

Mr. Silver said the exhibits indicated that on January 24, 2002, Hicksville city personnel were digging near the release site, discovered heavy odors of petroleum, petroleum staining, and free product. He said that on January 24, 2002, BUSTR directed written notice to Haver Realty of the contamination discovered on that date.

Mr. Silver stated that one aspect of the case that is integral to the recommendation to the Board is that Haver Realty decided to stay under the Ohio Administrative Code Section 1301:7-9-13(J), Remedial Action Plan, a rule adopted by the State Fire Marshal effective September 1992 rather than taking the option of electing to perform corrective action under rules adopted on March 31, 1999. Mr. Silver noted they continued under the September 1992 rules from 1992 until sometime in 2005.

Mr. Silver said that Haver Realty was required to complete a site assessment; however, during that phase, the city of Hicksville denied Haver Realty access to the right-of-way. This event denied Haver Realty the opportunity to pursue additional site assessment. Because the City of Hicksville denied Haver Realty access to the right of way, BUSTR deemed the site assessment complete and notified both Haver Realty and its consultant that the site assessment was complete and a remedial action plan was required to be submitted to BUSTR.

Haver Realty filed a claim reimbursement application to the Fund on September 15, 2005, for \$7,000 based upon two invoices for costs associated with site assessment activities. The Director of the Fund issued an initial settlement claim letter denying the claim for site assessment costs, referring to the site assessment completion date of July 1, 2003, and the deadline for filing an application for claim reimbursement with the Fund by July 1, 2004.

Mr. Silver said that because Haver Realty's claim for reimbursement for site assessment costs was filed on September 15, 2005, after the deadline of July 1, 2004, as required by Ohio Administrative Code Section 3737-1-12(B)(3), the denial of the claim reimbursement is found to comprise valid state action, as a matter of fact and law, and is recommended affirmed.

Mr. Geyer moved to uphold the Executive Director's decision and the Hearing Officer's findings of fact, conclusion of law, and recommendation. Mr. Hull seconded. A vote was taken and all voted in favor. The motion carried.

Certificate of Coverage Ratifications

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

Mr. Reeder explained that behind Tab 10 there is a list of owners who had been issued a Certificate of Coverage for program year 2006.

Mr. Reeder said that 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, that financial responsibility was demonstrated, and that the BUSTR registration was complete. In a second level of review, BUSTR registration data is considered to determine whether tanks for which coverage is sought are in compliance with BUSTR rules. Mr. Reeder said if there are no issues, the facility receives a Certificate of Coverage. Mr. Reeder asked that the Board ratify his actions with respect to the facilities receiving 2006 Certificates of Coverage.

Mr. Hull moved to ratify the list of 2006 Certificates of Coverage that were granted. Ms. Hilvert seconded. A vote was taken and all were in favor. The motion passed.

Mr. Reeder identified the list behind the blue divider sheet in Tab 10 as owners who were denied a Certificate of Coverage in the 2006 program year. He explained that if compliance issues are discovered, notice is provided to owners in accordance with Board rules and the Revised Code. Throughout this process the Board's staff works with owners to correct the fee statement record and/or the BUSTR registration record. Mr. Reeder stated that the staff often continues to work with owners even after a determination to deny a Certificate of Coverage has been issued. The Board's rules and the Revised Code make provisions for an appeal of the determinations issued within this process.

He stated that all of the processes as stated in the Board's rules and the Revised Code were followed in making the determinations for denying Certificates of Coverage. Mr. Reeder asked that the Board ratify his actions with respect to the facilities that were denied a Certificate of Coverage in program year 2006.

Mr. Hull moved to ratify the list of 2006 Certificates of Coverage that were denied. Ms. Hilvert seconded. A vote was taken and all were in favor. The motion passed.

Mr. Reeder continued, stating the list behind Tab 11 is a list of owners who had been issued a Certificate of Coverage for program year 2007. He explained the same process was followed with these tank owners as explained previously. Mr. Reeder asked that the Board ratify his actions with respect to the facilities that were granted a Certificate of Coverage for program year 2007.

Mr. Hull moved to ratify the list of Certificates of Coverage that were granted for program year 2007. Mr. Geyer seconded and a vote was taken. All were in favor. The motion passed.

Mr. Reeder concluded his report stating there have not been any denials of Certificates of Coverage in program year 2007.

Board Attendance

Chairman Rocco stated that the Governor's office recently issued a notice to remind all Boards and Commissions of the Legislatures' mandated attendance regulations. He stated that the Ohio Revised Code § 3.17 states in part: ". . .who fails to attend at least three-fifths of the regular and special meetings held by that board, commission, council, board of trustees, or public body during any two-year period forfeits the member's position on that board. . ." Chairman Rocco said, per a request from the Governor's office, an attendance record for the Petroleum Board members for the period of time from July 1, 2005 to August 31, 2007 had been submitted. He stated that this is a rolling attendance record that will cover the last ten Board meetings members were required to attend; i.e., if a member misses four out of the last ten meetings, that position would be forfeited.

Executive Session

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

Mr. Hull so moved. Ms. Kister seconded and a roll call vote followed. The following members voted in the affirmative: Messrs. Rocco, Hull, Cable, Epperson, Kmiec, Kuchta, Stephenson, Geyer, and Mss. Hilvert, Stevens, and Kister. There were no nays and the motion passed.

Reconvene Meeting

The Board adjourned from executive session and Chairman Rocco reconvened the public meeting at approximately 12:55 p.m.

Confirm Next Meeting

Mayor Kuchta made a motion to adjourn the meeting. Mr. Stephenson seconded. All were in favor. The next board meeting will be Wednesday, November 14, 2007, beginning at 10:00 a.m.