



# Petroleum Underground Storage Tank Release Compensation Board

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## MINUTES OF THE 128th MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD

September 9, 2009

### BOARD MEMBERS IN ATTENDANCE

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

### EX-OFFICIO MEMBERS IN ATTENDANCE

Tim Thompson, representing Director Kimberly Zurz, Ohio Department of Commerce  
Mary Ten Eyck Taylor, representing Kevin L. Boyce, Ohio Treasurer of State  
Chris Geyer, representing Director Chris Korleski, Ohio Environmental Protection Agency

### OTHERS IN ATTENDANCE

Starr Richmond	Executive Director, PUSTRCB
Don Leasor	Chief Fiscal Officer, PUSTRCB
Cindy Duann	Environmental Claims Supervisor, PUSTRCB
Ellen Mitton	Administrative Coordinator, PUSTRCB
Rita Arnold	Office Assistant, PUSTRCB
Nicole Johnson	Assurability Coordinator, PUSTRCB
Mary Jo McKenzie	Claims Coordinator, PUSTRCB
Cheryl Hawkinson	Assistant Attorney General
B. J. Reed	Speedway SuperAmerica
Sally Scheuermann	Speedway SuperAmerica
Michael Baker	BJAAM Environmental, Inc.
Jodi Handlin	BJAAM Environmental, Inc.
Doug Darrah	ATC Associates
Kevin Valentine	ATC Associates
Paul McMasters	Stantec
Laura Bibey	Stantec
Andrew Shrock	Parsons
Yvonne Monti	Sunoco
Michael Byrne	Sunoco

Minutes submitted by:

Ellen S. Mitton, Administrative Coordinator

## **Call To Order:**

Immediately following the 10:00 a.m. public hearing regarding the Board's proposed rule amendments, Chairman Rocco convened the one hundred twenty-eighth meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, September 9, 2009. The following members were in attendance: Jim Rocco; John Hull; Duane Cable; Brian Epperson; Mayor Don Kuchta; Tom Stephenson; Steve Hightower; Cheryl Hilvert; Tom Kmiec; Tim Thompson, representing Director Kimberly Zurz, Ohio Department of Commerce; Christopher Geyer, representing Director Chris Korleski, Ohio Environmental Protection Agency; and, Mary Ten Eyck Taylor, representing Kevin Boyce, Ohio Treasurer of State.

Chairman Rocco asked if there were any comments, questions, or discussion regarding the minutes from the June board meeting and there were none. Mr. Hightower moved to approve the minutes. Mr. Cable seconded the motion. A vote was taken and eleven members voted in the affirmative; Mayor Kuchta abstained. The motion carried.

## ***Election of Officers and Committee Member Appointments***

Chairman Rocco entertained motions from the floor for nominations of officers for the upcoming year. Mayor Kuchta nominated Mr. Jim Rocco to continue in his role as Chairman and nominated Mr. Hull to continue in his role as Vice Chairman. Hearing no other nominations, Mayor Kuchta made a motion to close the nominations and to elect Jim Rocco as the Chairman and John Hull as Vice Chairman. Mr. Stephenson seconded. A vote was taken and all members were in favor.

## ***Rules Committee***

Chairman Rocco asked for Board members to volunteer to participate on the Rules Committee for the next year. Brian Epperson volunteered to remain on the committee and Chris Geyer and Mayor Donald Kuchta volunteered to become members of the Rules Committee. Chairman Rocco and Vice Chairman Hull will work on the committee in an ad hoc capacity.

## ***Finance Committee***

Chairman Rocco noted that the Finance Committee consists of the Chairman, the Vice Chairman and one other Board member. Chairman Rocco asked Tom Stephenson to join the Finance Committee and he agreed. The Finance Committee members are Chairman Rocco, Vice Chairman Hull, and Mr. Stephenson.

## ***2010 Meeting Dates***

Chairman Rocco set the following 2010 meeting dates: January 13, February 10 (tentative), March 10, June 9, September 8, and November 10. All meetings begin at 10:00 a.m.

## **BUSTR Report:**

Chairman Rocco called upon Mr. Tim Thompson, Division Counsel, BUSTR, to present the BUSTR report.

Mr. Thompson stated that BUSTR is on track to meet one of the requirements of the Energy Act, which mandates the on-site inspection of each underground storage tank (UST) in Ohio every three years. He said that to date there had been inspections at 4,367 facilities, which represents approximately 56% of the total facilities. Mr. Thompson noted the current cycle close out date is August 8, 2010, and BUSTR anticipates meeting that deadline.

Mr. Thompson stated that BUSTR continues to work on their process improvement project. He said current processes and policies are being reviewed to improve responsiveness, especially when it involves working with

stakeholders. He noted that the Department of Commerce had recently revised all of its websites including the State Fire Marshal's website. Mr. Thompson said that the BUSTR web page is being redesigned to provide more information regarding rules and procedures, and to direct stakeholders to correct contact points. He noted that some of the links on the Department of Commerce website providing information regarding BUSTR laws, rules and guidelines had been revised. Mr. Thompson asked that BUSTR be notified if any problems arise when working through the links.

Mr. Thompson referenced the BUSTR Rule Revision/Development Process agenda located in each member's notebook, stating this information had been provided to all BUSTR registered tank owners. He said that the existing BUSTR administrative rules are being reviewed while simultaneously drafting new rules to conform to the requirements of the Energy Act of 2005.

Mr. Thompson explained the petition period, comment period, and Ohio's formal rule adoption process noting that BUSTR has set a July 2010 deadline.

### **Financial Report:**

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

Mr. Leasor stated that the auditors from Schneider Downs would be in-house October 19 to begin work on the 2009 audit. He anticipates the audit report to be presented to the Board at the first meeting in January 2010.

Mr. Leasor stated that he and Ms. Richmond would be going before the State Controlling Board to request an increase in the Board's appropriations for fiscal years 2010 and 2011 because the approved 2010-2011 biennium budget allocation was a reduction from the amount originally requested. He said that Ms. Richmond would be requesting the budget be restored to the original requested level as this budget relates only to the personnel expenses of the Board.

Mr. Leasor said the investment policy and the capitalization policy had been removed from this month's agenda as the proposed policies would be reviewed in the next few weeks with members of the State of Ohio Treasurer's office. He said after taking into consideration the Treasurer's suggestions, Ms. Hawkinson of the Attorney General's office would review the policies. Mr. Leasor said that these policies then would be reviewed by the Finance Committee and presented to the Board at the November meeting.

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

Mr. Leasor said that there is currently \$8.3 million in the obligated account that is set aside for fiscal year 2010 claim settlement payments. He said that the current unobligated balance is just under \$10.8 million, and another \$6.7 million is in the debt service account.

Mr. Leasor said that claims expense for July is just over \$99,000 noting that this is below the amount for the same period last year. He said in order to meet the \$9 million goal set for fiscal year 2009, the timing for the issuance of claim settlement determinations was changed this year so that more reimbursements were paid out prior to the end of the fiscal year. This in turn had an effect on the amount of payments made in July.

Mr. Leasor said that the total operating expenses for July were a little under \$143,000. He said the printing and copying line item is at 15% of the budgeted amount and that postage was at 47%, noting both line items are cyclical and have higher expenditures at this time due to the printing and mailing of the fee statements in April.

Mr. Leasor said the \$14,000 invoice for postage for the fee statement mailing wasn't submitted and paid until July. He noted that all other expenses are on target for this time of the fiscal year.

In response to Mr. Hightower's question regarding whether the purchases approved at the June Board meeting as part of the 2010 fiscal year budget had been made, Mr. Leasor stated that no capital purchases had been made to date but research was underway regarding the purchase of a new copier.

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

Mr. Leasor said that for the 2009 program year beginning on July 1, there had been \$13.7 million collected in current year fees to date, and \$249,697 collected in prior year fees, which represents 95.5% of the \$14.65 million budgeted fee revenue. He said fees had been paid for 21,050 tanks, representing approximately 97% of the 21,700 tanks anticipated to be assured in this program year. Mr. Leasor explained that 73% of the fees were paid at the standard deductible and 27% were paid at the reduced deductible.

In response to Mr. Hull's question, Mr. Leasor stated he does not see a trend being set with the collection of prior years' fees coming in at the beginning of the program year, but as a response to invoices mailed by the staff. Ms. Richmond added that when mailing the annual fee statements in April, owners with prior years' outstanding fees have an invoice included in that mailing, so the Board is receiving payments for prior years' fees along with the current annual year's fees during the first few months of each program year.

#### **Claims Report:**

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

Ms. Duann said that the current total maximum liability of in-house open claims is approximately \$29.4 million. She said using the historical claim payout ratio of 70%, the actual anticipated claim liability of unpaid claims is about \$20.6 million. She said that 1,775 fund eligible sites had received an NFA and the average cleanup cost per NFA site is \$123,978. Ms. Duann said that 145 NFA'd sites were cleaned up exclusively under BUSTR's 1999 and/or 2005 risk based corrective action (RBCA) rules with an average cleanup cost of \$68,800 per site, which is about 55% of the average cost of all NFA sites.

Ms. Duann said there are currently 12 claims under appeal, which is a much lower number than in the past few months. She said that settlement addenda had been issued for many of these appeals, and, more information had been requested from the tank owners for some appeals.

Recapping the 2008 program year, Ms. Duann stated that the Board had received 867 claims averaging about 72 claims received per month. She said that the staff had settled or closed 804 claims, averaging about 67 per month. Ms. Duann said that the overall claim settlement offer reached nearly \$8.2 million, which included a \$1.8 million lump sum settlement agreement with a major oil company for 136 claims. She said that the average claim payout rate in the 2008 program year was about 71% and the average reimbursement for each settled claim was just under \$10,900.

Ms. Duann said that during the first two months of this program year, the claims staff had received a total of 149 claims and settled or closed 73 claims. She stated the low number of claims settled thus far in the 2009 program year was due to the fact that one of the three claims analysts had been assigned to work with BUSTR for the review of ten RAP cost pre-approval applications for Dual Phase Extraction (DPE) remediation. She anticipates the staff will pick up the number of claims being settled in the coming weeks.

She said for the 2008 program year, 96 eligibility applications had been received. Ms. Duann said that 64 eligibility applications were approved and 29 were denied, noting a 69% approval rate.

Ms. Duann said that for the first two months of this program year, a total of 18 eligibility applications had been received and 24 applications had been approved with one denial. She said there are currently 25 open eligibility applications awaiting review.

Ms. Duann said in the 2008 program year, the Board received 239 requests for cost pre-approval and responded to 222 requests. She said there had been a total of 72 monitoring plans or Tier 3 work plans submitted in the 2008 program year. She explained that under the current rules, these work plans or monitoring plans are mandatory for cost pre-approval. Ms. Duann said that under the upcoming proposed rule changes, it would not be necessary to seek pre-approval of costs for those work plans or monitoring plans where the estimated costs would not exceed \$6,000. Ms. Duann said that with the rule change, it would reduce the staff's cost pre-approval review time for these relatively inexpensive items.

Ms. Duann stated that in July and August, the Board received 35 cost pre-approval applications and 60 had been determined.

## **New Business**

### ***Hardship Application***

#### **Claim #10650-0001/07/09/96 Owner – Robert Tishue**

Ms. Richmond stated that Robert Tishue, owner of the former Tishue's Carryout and Oil Co., submitted this application and he is the responsible person for a 1996 petroleum release that occurred at a facility he previously owned on West Pike Street in Morrow, Ohio.

She stated that this is Mr. Tishue's sixth request for hardship status and noted that one of the five previous requests was denied in November 2006 because no claims were pending reimbursement at that time. Ms. Richmond said that to date, the Fund has reimbursed Mr. Tishue slightly over \$73,000. She added that his most recent claim was received by the Fund in June 2009 with a face value just over \$10,000.

Ms. Richmond said that based on the information Mr. Tishue provided in the application, his only income is from social security and interest on retirement investments and his reported annual expenses slightly exceed his reported income. Ms. Richmond said that in addition to this review of the hardship application, a US Environmental Protection Agency (EPA) financial capacity test was used to determine if Mr. Tishue had the ability to carry debt. She said that the financial capacity test indicated that he could not afford corrective action costs.

Ms. Richmond recommended that the Board approve this application and grant hardship status to Robert Tishue. Mr. Hull moved to approve the application. Mayor Kuchta seconded and a vote was taken. All members voted in the affirmative. The motion carried.

### ***Certificate of Coverage Ratification***

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

Ms. Richmond explained that behind Tab 7 there are two lists of owners. The first is a listing of owners who had been issued a program year 2008 Certificate of Coverage; and, behind the blue divider page, a listing of owners who had been denied a program year 2008 Certificate of Coverage. She said that behind Tab 8 there is a list of owners who had been issued a program year 2009 Certificate of Coverage. Ms. Richmond said that to date no owners had been denied a program year 2009 Certificate of Coverage.

Ms. Richmond 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, financial responsibility was demonstrated, and BUSTR registration was complete. In a second level of review, BUSTR registration data is considered to determine whether tanks for which coverage is sought are in compliance with BUSTR rules. Ms. Richmond said if there are no issues, the facility receives a Certificate of Coverage.

Ms. Richmond explained that if compliance issues are discovered, notice is provided to owners in accordance with the Board's rules and the Revised Code. Throughout this process the Board's staff works with owners to correct the fee statement record and/or refers the owner to BUSTR to correct the registration record. She stated that the staff often continues to work with owners even after a determination to deny a Certificate of Coverage had been issued. The Board's rules and the Revised Code make provisions for an appeal of the determinations issued within this process.

Ms. Richmond asked that the Board ratify her actions with respect to the 70 owners of 467 facilities receiving 2008 Certificates of Coverage.

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

Ms. Richmond 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. Ms. Richmond asked that the Board ratify her actions with respect to the 34 owners of 40 facilities that were denied a Certificate of Coverage for program year 2008.

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

Ms. Richmond asked that the Board ratify her actions with respect to the 2,463 owners of 4,207 facilities receiving 2009 Certificates of Coverage. Ms. Richmond noted that due to the staff's efforts and commitment, this is a record year for the number of Certificates issued by this point in the program year.

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

### **Confirm Next Meeting**

Mr. Kmiec made a motion to adjourn the meeting. Mayor Kuchta seconded. All were in favor. The next board meeting will be Wednesday, November 18, 2009, beginning at 10:00 a.m.