



Petroleum Underground Storage Tank Release Compensation Board

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www.petroboard.org

MINUTES OF THE 143rd MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD September 19, 2012

BOARD MEMBERS IN ATTENDANCE

Jim Rocco

John Hull

Steve Hightower

Don Kuchta

EX-OFFICIO MEMBERS IN ATTENDANCE

Bill Hills, representing Director David Goodman, Ohio Department of Commerce
Chris Geyer, representing Director Scott J. Nally, Ohio Environmental Protection Agency
Bill Bishilany, representing Josh Mandel, Treasurer, State of Ohio

OTHERS IN ATTENDANCE

Starr Richmond	Executive Director, PUSTRCB
Don Leasor	Chief Fiscal Officer, PUSTRCB
Madelin Esquivel	Assistant Director, PUSTRCB
Cindy Duann	Environmental Claims Supervisor, PUSTRCB
Ellen Mitton	Administrative Coordinator, PUSTRCB
John Hickey	Fiscal Specialist, PUSTRCB
Jonathan Maneval	Accounts Receivable Analyst, PUSTRCB
Donna Kestler	Claims Administrative Assistant, PUSTRCB
Cheryl Hawkinson	Assistant Attorney General
Tom Stephenson	Stephenson Oil
Cheryl Hilvert	International City/County Management Association
Gordon Short	Treasurer of State's Office
Verne Ord	Commerce/SFM/BUSTR
Tyler Hansen	American Bridge
Terry Wilfong	Kemron Environmental Services
Paul Coleman	Kemron Environmental Services
Dan Adams	ATC Associates
Will Latt	Speedway, LLC
Eric Swaisgood	Speedway, LLC
Christie Kuhlmann	Stantec
William Barth	GES, Inc.
Mike Byrne	Sunoco, Inc.
Anne Connelly	Sunoco, Inc.

Minutes submitted by:

Ellen S. Mitton

Administrative Coordinator

Chairman Rocco convened the one hundred forty-third meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, September 19, 2012. The following members were in attendance: Jim Rocco; John Hull; Steve Hightower; Mayor Don Kuchta; Bill Hills, representing Director David Goodman, Ohio Department of Commerce; Christopher Geyer, representing Director Scott J. Nally, Ohio Environmental Protection Agency; and, Bill Bishilany, representing Josh Mandel, Treasurer, State of Ohio.

Chairman Rocco noted that the Board is waiting for confirmation from the Governor's office regarding the reappointments of Ms. Cheryl Hilvert and Mr. Tom Stephenson. He said even though they were not officially reappointed to the Board, he asked them to sit at the table during this meeting. He also stated that Mr. Duane Cable had retired from the insurance industry and Mr. Cable did not request to be reappointed to the Board. Chairman Rocco said currently there are applicants from the insurance industry being considered and a recommendation would be announced in the near future.

Chairman Rocco asked if there were any comments, questions, or discussion regarding the minutes from the June 13, 2012, board meeting and there were none. Mr. Hills moved to approve the minutes. Mr. Geyer seconded. A vote was taken and all members voted in the affirmative. The motion carried.

Election of Officers

Chairman Rocco entertained motions from the floor for nominations of officers for the upcoming year. Mr. Geyer moved to re-elect both Chairman Rocco and Vice Chairman Hull to their respective offices. Mr. Hightower seconded.

Mr. Hightower moved to close the nominations and Mr. Hills seconded. A vote was taken and all members voted in the affirmative. Chairman Rocco stated the nominations are closed.

Chairman Rocco said there is a motion on the floor to re-elect Mr. Rocco as Chairman and Mr. Hull as Vice Chairman. A vote was taken and all the members voted in the affirmative.

Committee Appointments

Chairman Rocco stated that at this time of the year, the Board also selects members to participate on the Rules Committee and the Finance Committee. He said if there were no objections, he would request the Board postpone these appointments until the November meeting.

2013 Meeting Dates

Chairman Rocco set the following 2013 meeting dates: January 9, March 20, June 12, September 4, and November 20. All meetings begin at 10:00 a.m.

BUSTR Report:

Chairman Rocco called upon Bill Hills, Bureau Chief, to present the BUSTR report.

Mr. Hills said BUSTR met all the requirements of the Domenici-Barton Energy Policy Act of 2005, also known as the Energy Policy Act, regarding UST-release prevention and training of owners and operators of UST systems.

Mr. Hills said BUSTR filed the final reports on March 31, 2012, regarding activities under the American Recovery and Reinvestment Act of 2009 (ARRA). He said the grant ended on May 14, 2012.

Mr. Hills said BUSTR continues to work on the OTTER database upgrade project. He said the project went “live” on April 30, 2012, and since that time, 120 issues were identified and 14 issues still need to be resolved.

Mr. Hills said BUSTR continues working on the click-scheduling project. He explained the click-scheduling project is a GPS driven computer program that geographically schedules the inspectors to visit facilities that are located in the same geographical area. Mr. Hills said 15 computer tablets had been delivered to the State Fire Marshal; however, formatting of the tablets is on hold for approximately 30 to 60 days until IT personnel become available to perform the task.

Mr. Hills said the UST operation compliance inspection current grant cycle ends August 8, 2013. Mr. Hills said for week ending September 8, 2012, there had been 47 inspections conducted for a total of 6,884 inspections this grant cycle, which puts BUSTR 25% ahead of projections.

Mr. Hills said the corrective action current grant cycle ends September 30, 2013. He said for the week ending September 8, 2012, there were nine NFAs generated for a total of 625 NFAs. He said BUSTR projected a total of 612 NFAs during the current grant cycle, and to date the Bureau is 2% ahead of projections.

Mr. Hills stated currently there are 3,786 owners of 7,629 registered facilities and 22,249 registered USTs. He said there had been a total of 27,058 NFAs related to clean-ups issued by the BUSTR program since its inception.

Financial Report:

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

Mr. Leasor introduced Mr. Gordon C. Short, Chief Investment Officer, from the office of the State Treasurer of Ohio to discuss options available to the Board regarding the investment of unobligated monies.

Mr. Short stated the State Treasurer invests using three principles and in order of importance, they are safety, liquidity, and yield. The Treasurer’s office looked into strategies to enhance the yield on the Board’s investments, while maintaining safety of the funds. Mr. Short stated fixed income investments, which are relatively the safest investments, currently have a historical low rate of return. He reported the Federal Reserve plans to keep interest rates low until the middle of 2015.

Currently the Board’s unobligated investments are invested in StarOhio, a local government investment pool, which is rated AAAM by Standard and Poors. One of StarOhio’s benefits are investments have a high degree of liquidity to allow availability of funds for cash flow needs. StarOhio’s current yield is .10%. If liquidity is not a prime concern there are other investments that offer a higher yield.

Mr. Short stated an alternative to StarOhio would be investing in U.S. government treasuries. They provide a fixed interest rate for the term of the treasury, but can appreciate or depreciate in value if not held until maturity. If due to cash flow needs the treasuries were sold prior to maturity, there is a risk of loss of principal as the sale price would be subject to market conditions. One year treasuries are yielding .165%, three year treasuries are yielding .347%, and five year treasuries are yielding .701%.

He said a second alternative is U.S. agency bonds. These are bonds issued by various government agencies and offer a higher yield than U.S. government treasuries. They have the implied guarantee of the U.S. government and operate similar to treasuries. The bonds come in two different structures: bullet and callable.

Mr. Short said a bullet structure is like a U.S. government treasury offering a fixed interest rate, fixed term investment. He said three year agency bullets are currently yielding .43%.

Mr. Short explained a callable structure is an agency bond that has the option to be called by the issuing agency during the term of the bond. A three year callable bond currently yields .5%. If the bond is called prior to the stated maturity, there is no risk to the principal. He said the Board would receive the principal invested and any interest earned up to the point the bond was called. The risk is that interest rates could decrease, the bond would subsequently be called, and the Board would then need to reinvest the funds at a lower interest rate.

He said callable bonds are also available in a step rate structure. A step rate bond is a callable structure combined with predetermined increases in interest rates over the term of the bond. Each year the interest rate on the bond increases, however the issuing agency has a callable option and may call in the bonds prior to maturity depending on the market conditions.

Mr. Short stated that what the Board elects to invest in depends on the Board's comfort level with the market conditions and how often they want to reinvest the funds.

Mr. Hull stated that as StarOhio currently yields .10%, any of the investment options would be an increase in the yield. The Board's goal is not to accumulate wealth, but to protect the Fund's reserves against potential inflation. One of the Board's goals is to have the lowest operational costs for its constituents, the tank owners. If annual fees are kept to a minimum, the tank owners will have the funds available to invest for themselves. He said the term of the investment should be kept short. By keeping the term short, when inflation begins to rise, the investments will not be locked in and can be adjusted to keep pace with any increases.

Mr. Hightower stated if there is no risk of principal loss, he suggests the Board look at the investment with the highest yield. The only downside being that if called, the funds may have to be reinvested at a later date and lower rate.

Mr. Short stated that an option would be to ladder the investments. This involves purchasing bonds with varying terms, which allows the funds to be incrementally reinvested as interest rates increase.

Mr. Geyer asked about transaction costs. Mr. Short responded that transaction costs are built into the cost of the bonds.

Chairman Rocco said the Finance Committee would need to examine the unobligated balance and determine what amount could be tied up over a specific period of time. He stated the committee would put together a proposal with its recommendations for the Board members' perusal.

May and June Financials

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

Mr. Leasor said the current unobligated balance is just under \$13.1 million. He said there is currently just over \$7.1 million in the obligated account that is set aside for fiscal year 2013 claims settlement payments.

Mr. Leasor said the fiscal year 2012 tank fee revenue was approximately \$14.5 million, which is 2% over the amount budgeted for fiscal year 2012.

Mr. Leasor said the claims expense for fiscal year 2012 was \$6.7 million, which is net of \$355,000 received through a subrogation claim. He said fiscal year 2013 total claims expense to date is approximately \$1.9 million.

Mr. Leasor said the operating expenses for June totaled just over \$133,000. He said fiscal year 2012 operating expenses were at 96% of the amount budgeted. He said as of June 30, 2012, salaries were approximately 1.4% over the amount budgeted for fiscal year 2012; and, temporary services were approximately 4.2% over budget.

Mr. Leasor noted the other expenses came in under budget for the 2012 fiscal year.

Fee Statement Statistics

Mr. Leasor said as of September 18, 2012, the program year 2012 per tank fees collected were approximately \$13.4 million, which is 95% of the invoiced amount. He said between July 1, 2011 and September 18, 2012, approximately \$14.1 million had been collected for program year 2011 Fund fees. He said there had been \$546,214 collected in prior year fees net of any refunds. Mr. Leasor said for the program year 2011 a total of \$404,889 had been paid in tank fee refunds.

He said for the 2012 program year 16,108 USTs were billed at the standard deductible (\$55,000) and 5,645 USTs were billed at the reduced deductible (\$11,000). Mr. Leasor said as of September 18, 2012, the number of tanks paid at the standard deductible totals 15,006 and he said there are 5,546 USTs paid at the reduced deductible. Mr. Leasor said as of this date, a total of 3,219 owners had paid per tank fees for 20,552 USTs. Mr. Leasor said these figures compare to 20,461 USTs paid by 3,257 owners for the same time period in program year 2011.

Mr. Leasor said the \$13.7 million collected to date is 96.9% of the \$14,100,000 budgeted for program year 2012. He said the 20,552 paid USTs for program year 2012 is 98.6% of the 20,850 tanks anticipated to be assured this year.

Audit Update

Mr. Leasor said the auditors began their in-house portion of the audit in mid-September. He said the audited financial statements are due to the Auditor of State by December 31, 2012. Mr. Leasor anticipates the audited financial statements would be presented at the November Board meeting in order to meet the December deadline.

Compliance/Fee Assessment Report

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

Ms. Esquivel said the refund goal for program year 2012 had been set at \$275,000. She said for the first two months of the 2012 program year, 21 fee refunds had been paid to six owners for a total of \$6,800. Ms. Esquivel said there are 3,402 pending refunds totaling \$1,552,705.

Ms. Esquivel explained that if an owner has outstanding fees and a refund has been identified, the refund is first used to offset the outstanding fees for that account and any remaining amount is paid to the owner. She said, to date, a total of \$12,050 had been used to offset outstanding Fund fees.

Ms. Esquivel said there had been \$52,842 collected by the Attorney General's Office and Special Counsel so far this fiscal year. She said after deducting the collection costs of \$9,901, the net amount received by the Board totaled \$42,941. Ms. Esquivel said no accounts had been certified to the Attorney General's office for program year 2012; however, there would be a certification in October.

Ms. Esquivel said there are seven Orders Pursuant to Law currently in appeal status and under review. She said there are three Determinations to Deny a Certificate of Coverage currently under appeal and two Ability to Pay Applications have been submitted since the June Board meeting.

Ms. Esquivel said 3,538 fee statements had been mailed for program year 2012. She said as of August 31, 2012, a total of 2,795 owners were issued Certificates of Coverage for the 2012 program year, which is 86% of the total number of certificates (3,254) issued for the 2011 program year.

Ms. Esquivel said all Certificate of Coverage applications received to date that were completed correctly and for which the invoiced amount of Fund fees had been paid have been processed.

Ms. Esquivel said currently 420 owners' applications are still being processed; however, since the first pending denials for this program year were recently issued, there are no applications with unresolved determinations to deny the Certificate of Coverage.

Per Chairman Rocco's request, Ms. Esquivel explained some examples of issues requiring a pending denial of a Certificate of Coverage could be: no signature on the application; the application is not notarized when required; or, the applicant failed to meet the requirements of Ohio Administrative Code (O.A.C.) 3737-1-04.1.

Ms. Esquivel said there are 12 owners on the unclaimed monies list who had been issued a refund check but for unknown reasons, the check had not been cashed. This amount totals \$3,625. She said there are an additional 72 owners on the unclaimed monies list with pending refunds totaling \$104,020. These owners' files have been reconciled and the staff is waiting for information that would verify the amount of the refund, if any, due to an owner.

She said the unclaimed monies list is available on the Board's website at www.petroboard.org.

Claims Report:

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

Ms. Duann said the current total maximum liability of in-house open claims is approximately \$26.6 million. Ms. Duann said using the historical claim payout ratio of 70% the actual anticipated claim liability of unpaid in-house claims is about \$18.6 million. She reported that a total of 2,049 sites had been issued NFAs with an average cleanup cost of \$126,321 per site. Ms. Duann said currently there are 1,720 open claims pending review; and, only 15 claims are under appeal.

She said during the last seven months of the 2011 program year, the staff reached their goal of settling 65 or more claims per month without settling a number of major oil claims at one time using the lump sum payment process. Ms. Duann said that during the 2011 program year, 794 claim applications had been received and 819 claims had been either settled or closed. She said the total claim settlement offer of \$7 million has an average claim payout of 71.6% of the net value. Ms. Duann said approximately 66.5% of the claims settled had been received from major oil companies.

Ms. Duann stated that during the first two months of program year 2012, a total of 139 claims had been either settled or closed with a total settlement offer of almost \$2 million. She said approximately 80% of the claims settled were from major oil companies.

Ms. Duann said during the 2011 program year, 63 eligibility applications were received and 60 eligibility determinations were issued with a 75% approval rate.

Ms. Duann said that during the first two months of the 2012 program year, the Board received 10 eligibility applications and 13 determinations were issued. She stated five of those determinations had been denied, which includes three with no release or corrective action required; one for an incomplete application; and, one for an out-of-compliance tank system.

Ms. Duann said that during the 2011 program year, 219 requests for cost pre-approval were received and 211 cost pre-approval notifications were issued. She stated 33 new requests for RAP cost pre-approval were received this year, which is higher than normal and these are typically more time-consuming to review.

Ms. Duann said that in July and August the claims staff focused on cost pre-approvals, resulting in 44 cost pre-approvals reviewed and issued with notifications. She said that during the same time period, the Board received 29 requests for cost pre-approval.

New Business

Chairman Rocco said he would prefer that the Board not vote to ratify the contract for Special Counsel services at this time, but he would like to have a motion to table this contract ratification until the Board returns from the Executive Session. Mr. Hightower so moved and Mr. Hills seconded. A vote was taken and all of the members voted in the affirmative.

Hardship Application

Chairman Rocco called upon Ms. Richmond to present the hardship applications. Ms. Richmond stated when hardship status is granted to an owner, the review of the owner's claims is expedited, thereby reducing the owner's financial burden. She said hardship status is granted for one year and can be renewed annually by submitting another application accompanied with updated financial information.

Claim #18344-0001/10/26/98, Gary Glessner, Treasurer, Red Stripe Assoc., St. Clairsville, OH

Ms. Richmond said Mr. Glessner is the responsible person for a 1998 release that occurred at 50708 National Road in St. Clairsville, Ohio. Ms. Richmond said this is the twelfth request by Red Stripe Associates for hardship status. She said to date the Fund has reimbursed Red Stripe \$202,000. Ms. Richmond said no claims are pending review; however, \$23,000 has been pre-approved for work to be completed within the next six months. Ms. Richmond stated additionally, BUSTR had approved a RAP for which the costs are estimated to be \$150,000. She said the Fund has not received a request for pre-approval of those RAP costs.

Ms. Richmond said that during a conversation with Mr. Glessner, and as verified by the company's tax records, the property and business were sold to Sober Systems LLC at a loss in November 2008. She said Red Stripe provided the financing for the new owner, and the only cash receipts are from the new owner's monthly payment. She said those funds are then used to make Red Stripe's payments on the original loans to acquire the property.

Ms. Richmond said based on an Environmental Protection Agency (EPA) financial capacity test and information submitted in the hardship application, there is less than a 50% probability that Red Stripe can afford the \$23,000 in corrective action costs which have been pre-approved. She said Red Stripe is not in a position where it can acquire financing or manage its cash flow to self finance ongoing corrective action.

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

Old Business

Certificates of Coverage Ratification

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

Ms. Richmond said that behind Tabs 8 and 9 are listings of facilities that, since the June Board meeting, had been issued or denied a program year 2011 or 2012 Certificate of Coverage. She said to date no 2012 Certificates had been denied.

Ms. Richmond said that 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 has been 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 had 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 discovered, 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/or refers the owner to BUSTR to correct the registration record.

Ms. Richmond asked the Board to ratify her actions with respect to the issuance of the 2011 Certificates of Coverage for the 168 facilities included on the list behind Tab 8.

Mr. Hull moved to ratify the list of 2011 Certificates of Coverage that were granted. Mayor Kuchta seconded. A vote was taken and all of the members were in favor. The motion passed.

Ms. Richmond asked the Board to ratify her actions with respect to the denial of the 2011 program year Certificates of Coverage for the 40 facilities included on the list behind the Tab 8 blue divider page.

Mayor Kuchta moved to ratify the list of 2011 Certificates of Coverage that were denied. Mr. Hull seconded. A vote was taken and all of the members were in favor. The motion passed.

Ms. Richmond asked the Board to ratify her actions with respect to the issuance of the 2012 program year Certificates of Coverage for the 2,779 owners of 5,550 facilities included on the list behind Tab 9.

Mr. Hull moved to ratify the list of 2012 Certificates of Coverage that were granted. Mr. Geyer seconded. A vote was taken and all of the members were in favor. The motion passed.

Executive Session

Chairman Rocco requested a motion to go into executive session pursuant to O.R.C. 121.22(G)(3) to discuss matters of pending or imminent court action. Mr. Hull so moved. Mr. Hills seconded and a roll call vote followed. The following members voted in the affirmative: Messrs. Hull, Bishilany, Hightower, Kuchta, Hills, and Geyer. Chairman Rocco abstained. There were no nays and the motion passed.

Prior to moving into executive session, Chairman Rocco recused himself from the executive session and turned the meeting over to Vice Chairman Hull. Vice Chairman Hull requested Ms. Hilvert and Mr. Stephenson to participate with the Board during Executive Session.

Reconvene Meeting

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

Mr. Hull informed Chairman Rocco that there was no activity to be discussed following the Executive Session. He asked the Chairman to request a motion to table the ratification of the extension of the contract for Special Counsel services with the Attorney General's office pending receipt of additional information. He noted if the information is received, the ratification of the contract would be placed on the November Board meeting agenda. Mr. Geyer so moved and Mayor Kuchta seconded. A vote was taken and all of the members were in favor.

Chairman Rocco requested a motion to defer all other ratifications of previous Board motions until the November 28, 2012, Board meeting. Mr. Geyer so moved and Mr. Bishilany seconded. A vote was taken and all of the members were in favor.

Confirm Next Meeting

Mayor Kuchta made a motion to adjourn the meeting and Mr. Hightower seconded. All were in favor. The next board meeting will be Wednesday, November 28, 2012. Ms. Richmond reminded the Board members that there would be an ethics training session immediately following the November Board meeting.