



Petroleum Underground Storage Tank Release Compensation Board

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MINUTES OF THE 197th MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD

February 8, 2023 – 10:00 a.m.

BOARD MEMBERS IN ATTENDANCE

Jim Rocco
John Hull
Steve Bergman
Don Bryant
Larry Burks
Dan Ridi
Tom Stephenson

EX-OFFICIO MEMBERS IN ATTENDANCE

Scott King, representing Director Sheryl Creed Maxfield, Ohio Department of Commerce
Donna Waggener, representing Director Anne Vogel, 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
Hannah Brame	Claims Supervisor, PUSTRCB
Jonathan Maneval	Executive Assistant, PUSTRCB
Beth Fligner	Assistant Attorney General
Danny Sklenicka	Rea & Associates, Inc.
Dan Adams	Atlas Technical Consultants

Minutes submitted by:


Jonathan Maneval
Executive Assistant

Call to Order:

Chairman Rocco convened the one hundred ninety-seventh meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, February 8, 2023.

The following members were in attendance: Jim Rocco; Steve Bergman; Don Bryant; Larry Burks; John Hull; Dan Ridi; Tom Stephenson; Donna Waggener, representing Director Anne Vogel, Ohio Environmental Protection Agency; Scott King, representing Director Sheryl Creed Maxfield, Ohio Department of Commerce; and Michael Lenzo, representing Robert Sprague, State Treasurer of Ohio.

The following member was not in attendance: Scott Fleming.

Minutes:

Chairman Rocco asked if there were any comments or questions regarding the minutes from the November 30, 2022 Board meeting and there were none. Vice-Chairman Hull moved to approve the minutes and Mr. Bergman seconded. A vote was taken and all were in favor. The minutes were approved as presented.

BUSTR Report:

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

Mr. King reported that three underground storage tank (UST) inspectors were hired in the fall making BUSTR fully staffed with 30 personnel. He said the three new inspectors were retired firefighters who already had inspection experience working in their local jurisdictions.

Mr. King reported that grant funding was allotted for 60 responsible party searches and 50 of the 60 searches had been completed. He said this year the searches have an element of the work plan guidelines from the U.S. Environmental Protection Agency (U.S. EPA) to focus on ESG (environmental, social, and governance). He said a community can be found anywhere in the state that can have environmental, social, and governance issues.

Mr. King said BUSTR's staff is continuing to work in a hybrid telework environment with the staff working in office two days and remotely three days a week. He said the hybrid rotation is good for employee morale and they are still able to provide services with no interruption and also continue working on major projects.

Mr. King said the annual certified installer and inspector courses will be taught in March and will include new training equipment to enhance the experience.

Mr. King said the new OTTER (Ohio Tank Tracking & Environmental Regulations) database continues to be in development and is turning into a much bigger project than what was initially anticipated. He said they are enhancing it with GIS capabilities and ensuring the 30 years of data is going to be placed in the right spot.

Mr. King stated that there are about 21,000 registered tanks and noted a recent trend in the number of registered tanks slightly increasing while the number of registered owners is slightly decreasing. He mentioned that a couple of major marketers are planning new site builds over the next two to three years, with one owner projecting to build 160 new locations within the next two years.

Mr. King said in the last legislative cycle Senate Bill 131 and House Bill 504 were passed by the legislature and will become effective on April 6, 2023. He said the legislation affects the UST installer certification and recertification and will require BUSTR to open rule 1301:7-9-11 to adjust some wording to meet the new requirements. He said the fee for certification and recertification is being changed from \$150 annually to \$300 biannually.

Mr. King said a total of 93 no further actions (NFAs) were issued in the reporting cycle and roughly 7,190 inspections were completed in the previous three-year inspection cycle. He said the U.S. EPA is extremely happy with the progress being made and noted that Ohio was listed as a top five performer for both corrective actions and release prevention for Region 5 in its mid-year review.

Ms. Waggener asked if 160 new stations or 160 new USTs were projected and Mr. King said one marketer indicated they could be adding 160 new locations, which might add 320 or more USTs. He said there are several different larger organizations looking to grow in Ohio and they are growing rapidly in some areas.

Chairman Rocco asked how ESG fits in to the BUSTR operation. Mr. King said guidance from the U.S. EPA is incomplete and EPA is still working to understand and define the parameters. He said he believes the analysis will look at social, economic, and environmental factors and how those factors weigh into areas of demographics such as age and race. He said on the environmental side, the analysis will help identify population bases with the highest risks. The Chairman asked if federal grant funding was contingent on ESG and Mr. King said it is not. He commented that ESG information is being included in the work plan.

Financial Reports:

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

Audit Report

Mr. Leasor stated that the audit reports and financial statements for fiscal year 2022 were submitted to the Auditor of State's Office prior to the December 31, 2022 filing deadline. He pointed out that the audit report was provided to the Board members with the other meeting materials.

Mr. Leasor then introduced Danny Sklenicka, a representative from the accounting firm of Rea & Associates, and asked him to discuss the audit reports.

Mr. Sklenicka stated that their audit plan was presented in October, the field work was conducted in October and November, and the audit reports were submitted to the Auditor of State's Office on December 23, 2022. He said the Auditor's Office conducted a desk review of the audit and it was publicly released in February 2023.

Mr. Sklenicka pointed out that the materials provided include a summary of results letter followed by the financial statement report. He said the audit was conducted in accordance with government auditing standards since the Board is a government organization. He explained that this requires the auditors to understand the organization's internal controls and do limited procedures to identify any noncompliance with laws and regulations. He said no non-compliance matters were identified throughout the audit process. He said the audit progressed very well with all needed information being provided by management and there being no disagreements with management.

Mr. Sklenicka mentioned that a new accounting standard was implemented, which had minimal impact on the financial statements. He said the standard, GASB (Governmental Accounting Standard Board) Statement No. 87, concerns how the lease of the office space is presented. He said the lease is now shown as an asset and corresponding liability for the next two years of payments.

Mr. Sklenicka said the firm used a risk-based approach to the audit where they look at accounts with higher estimation and that are going to pose more risk. He said the allowance for the collectability of outstanding tank fees and the reserve for unpaid claims were two accounts that they spent some time on. He said management's estimates and dollar amounts were reviewed and there were no issues and no findings working through those. He said there were no audit adjustments or any past adjustments identified throughout their audit process.

Mr. Sklenicka said auditing standards require them to evaluate the organization's ability to continue operations one year from the balance sheet date. He said through that evaluation, they noticed the Board continues to have an increase in deficit in the net position or the equity of the organization, which they discussed with management. He said they have no concerns the organization would not exist in a year and the opinion letter now includes a sentence regarding the Board's ability to continue as a going concern.

Mr. Sklenicka directed members to the opinion, which he pointed out is now presented in the first section of the report. He said it is a clean opinion with no audit adjustments and is the highest level of assurance that can be provided by auditors.

Mr. Sklenicka then directed members to the independent auditor report on internal control. He said they are required to understand internal controls of the organization but noted it is not a SOX (Sarbenes-Oxley) audit. He said as part of looking at those internal controls, if there had been any findings or issues of noncompliance, they would be reported in this letter. He said there were no material weaknesses, no significant deficiencies, and no reportable findings. He said overall it is a clean audit and he thanked Executive Director Starr Richmond, Mr. Leasor, and the staff for their help during the audit process. He highlighted that a lot of effort goes into the audit, and a clean audit is a result of good financial reporting and recordkeeping throughout the year.

Chairman Rocco asked Mr. Sklenicka to briefly talk about a management letter that was issued. Mr. Sklenicka said there are three levels of findings, a material weakness, which is the most severe level, a significant deficiency, and then a management letter. He said they did issue a management letter, which concerned best practice recommendations or things that were identified for management's consideration. He said through discussions with Executive Director Richmond and Mr. Leasor, he

believed some processes have been implemented to address the best practice recommendations. Chairman Rocco said he did not see the management letter with the audit reports and asked where it was sent. Mr. Sklenicka said the letter was given to management for consideration and to the Auditor of State. He noted the Auditor of State does not publish the management letter on its website or in the public forum. Vice-Chairman Hull asked if another submission to the Auditor's Office is required and Mr. Sklenicka said no additional submission was needed and the Auditor of State does not usually act on a management letter because they deem the recommendation to be between the audit firm and the client. The Chairman requested that in the future, a copy of any management letter be provided to the Board before submitting it to the Auditor's Office so there is an opportunity to provide a response or additional clarification if needed.

Chairman Rocco said the management letter raised three issues. He said the first dealt with database access, the second concerned the process of issuing checks, and the third looked at the Fund's deficit and liability estimates. The Chairman said he and Executive Director Richmond discussed the letter and will come back to the Board with any changes that might result from it. He said the Finance Committee looks at the deficit and liability estimates every year and consciously made the decision to not raise fees for the next year while recognizing the fees will likely need to be raised in the future. Following some further discussion, Mr. Sklenicka noted that the auditors did not conduct a cost-benefit analysis and it would be up to management to determine if implementing any recommendations makes sense given the time and people constraints.

Estimated Unpaid Claims Liability Report

Mr. Leasor directed members to the Independent Actuarial Analysis of Fund Liabilities report. He explained that the report is an estimate of the unpaid claim liability of the Fund, as of June 30, 2022.

Mr. Leasor said as a result of ongoing litigation, the Board suspended the review and settlement of claims filed by several major oil companies. He said the Board contracted with an independent actuarial firm, Milliman, to evaluate the claims that were suspended due to litigation and provide the claim liability estimate for the suspended claims for fiscal years 2018-2021. Mr. Leasor said in fiscal year 2022, the Board contracted with Milliman to provide the entire estimate of the unpaid claims liability of the Fund, and that amount is included as part of the audited financial statements. He said Milliman performed the evaluation using actuarial methods similar to those used in the development of the estimate for fiscal year 2021.

Mr. Leasor directed members to Page 3 of the report, which shows the estimated liability for the non-held claims is just under \$28 million and the estimated liability for the held claims is \$6.27 million. He said the total estimated liability, as of June 30, 2022, is \$34.26 million. He noted that the estimate of claim liability decreased \$1.96 million from the previous year.

Chairman Rocco asked if the estimated liability for the held claims changed because of the recent settlements and Mr. Leasor confirmed that it did. Vice-Chairman Hall asked if the decrease in claim liability was due to claims being paid or reflect some significant recalculation or adjustments. Mr. Leasor said the decrease in total liability was due to payments made and noted that \$11 million in claims was paid in fiscal year 2022, which included a \$4 million payment for held claims.

November and December Financials

Mr. Leasor said the November and December financials were emailed to each member and said he would be discussing the December 2022 financial report.

Mr. Leasor said in accordance with the Settlement Agreement and Release executed with Sunoco, payment in the amount of \$3.2 million, less attorney's fees, was received on January 17, 2023.

Mr. Leasor reported, as of February 7, 2023, the unobligated account balance is \$17.72 million. He said this amount includes \$3.6 million in STAR Ohio (State Treasury Asset Reserve of Ohio) and the custodial account, and \$14.12 million invested in U.S. treasuries and U.S. agency callable bonds. He said the obligated account balance for the payment of claims is \$5.16 million.

Mr. Leasor reported that, as of December 31, 2022, approximately 98% of the budgeted revenues, net of refunds, had been collected. He said information on refunds and fee collections would be presented as part of the compliance and fee assessment report.

Mr. Leasor said as of December 31, 2022, expenses should be 50% of the amount budgeted for the fiscal year. He reported the claims expense for the month of December was \$678,000 and to date, just under \$3.96 million has been paid for claims in fiscal year 2023. He said this is 44% of the \$9 million obligated by the Board for the payment of claims for the fiscal year and includes the final payment to BP as result of the Settlement Agreement and Release approved by the Board.

Mr. Leasor said as of December 31, 2022, postage expenses were 67% of the amount budgeted. He said this was due to postage fees for the final quarter of fiscal year 2022 being paid in August of fiscal year 2023. He said these charges include fees for the annual fee statement mailing, which is sent by certified mail. He said all other expenses are at or below where they should be at this time in the fiscal year. Mr. Leasor noted the temporary services expenditures were for an individual who was subsequently hired as a permanent employee effective January 16, 2023. He reported that operating expenses for the month of December were approximately \$163,000.

Compliance and Fee Assessment Report:

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

Ms. Esquivel reported that since July 1, 2022, a total of \$168,560 in refunds was paid to 110 owners. She said the amount of pending refunds currently totals \$1,402,740. She said \$37,525 of pending refunds had been used to offset outstanding fees.

Ms. Esquivel said since July 1, 2022, the fees collected by the Attorney General's Office and Special Counsel less collection costs totaled \$71,950. She noted that no accounts had been certified to the Attorney General's Office for collection since July 1, 2022. She said the unpaid program year 2022 fees will be certified for collection soon.

Ms. Esquivel reported that five Orders Pursuant to Law are currently under appeal. She said information to support the appeals is expected for four of them and a hearing is scheduled for one

appeal. She said three Determinations to Deny a Certificate of Coverage were under appeal and information to support one appeal was received and is under review. She said information to support two appeals is expected.

Ms. Esquivel stated that two 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 February 1, 2023, Certificates of Coverage had been issued to 2,819 owners for program year 2022. She said there are 68 Applications for Certificates of Coverage currently being processed. She said for program year 2022, there are 46 owners with unresolved Notices of Pending Denial and 40 owners with unresolved Determinations to Deny a Certificate of Coverage.

Ms. Esquivel stated that there are 34 uncashed refund checks totaling \$42,008. She said there are 18 owners with pending refunds totaling \$98,086 to whom more information request letters had been sent notifying them that additional information is needed before the refund may be issued and we are waiting on a response. She said there are 38 owners with pending refunds totaling \$69,015 for which information had been requested, but responses were not received by the response deadline.

Claims Reports:

Chairman Rocco called on Hannah Brame, Claims Supervisor, to present the claims reports.

Ms. Brame reported, as of February 1, 2023, the total maximum liability of in-house open claims is approximately \$9.77 million. She said using the claim payout ratio of 79%, which is the average ratio over the past five years, the anticipated payout of unpaid in-house claims is about \$7.72 million. She noted the average claim payout ratio is about 75% when the program year 2019 settlement agreement with BP is included in the average.

Ms. Brame reported, as of February 1, 2023, a total of 517 claims with a total face value above the deductible amount were pending review and noted that claims received prior to September 2022 are currently being reviewed by the staff. She stated that 21 claim settlement determinations were under appeal, as of February 1, 2023. She explained that these appeals pertain to only five release sites, as there are multiple appeals for two of those sites. She noted the staff is waiting for information to support the appeals for two of the appealed determinations, additional information provided is under review for two appeals, and a hearing is scheduled for 17 of the appeals.

Ms. Brame stated that, as of February 1, 2023, a total of 263 claims were received and a total of 312 claim determinations were issued this program year. She noted that no payment could be issued for 29 of these claims as the total face values were below the deductible amount and the releases had received NFA status, meaning no additional corrective actions were required. She said the average payout per claim application this program year is \$11,440 and the average claim payout is 71% of the net claim value (face value – deductible). She noted that on average 24.2% of the claim face value is disallowed as nonreimbursable. She commented that the averages this program year are impacted by a December

2022 Settlement Agreement and Release with Sunoco in which 10 claim packages totaling \$318,554 were closed without review and no payment was issued.

Ms. Brame reported so far for program year 2022, a total of 38 eligibility applications were received and 53 eligibility determinations were issued. She said of these eligibility determinations, 41 were approved and 12 were denied. She said the reasons for denial included one for no release demonstrated, three for late filing of the application, one for lack of a valid Certificate of Coverage, two for either abandoned or out-of-compliance USTs, and five for no corrective actions being required by BUSTR.

Ms. Brame stated that, as of February 1, 2023, a total of 85 eligibility applications were open. She noted that 12 applications were unreviewable until the necessary reports are received and more information has been requested for six applications. She noted that, as of February 1, 2023, nine eligibility determinations were under appeal. She said additional information is expected for one appeal, information for seven appeals has been received and is under review, and a hearing is scheduled for one eligibility appeal.

Ms. Brame reported, as of February 1, 2023, a total of 56 cost pre-approval requests were received. She said the cost pre-approval requests include eight requests for new remedial action plans (RAPs); 27 requests for annual costs for remedial action plans or free product recovery; two requests for interim response actions requiring BUSTR approval; nine requests for either Tier 3, monitoring or calibration plans; five cost exceedance notifications; and five voluntary requests for cost pre-approval. She said as of February 1, 2023, a total of 59 cost pre-approval notifications had been issued and 39 cost pre-approval requests were pending review.

Ms. Brame said at the November 30, 2022 Board meeting, there was a discussion concerning the status of RAPs. She explained that the Board specifically requested a listing of sites in the RAP stage that have ongoing monitoring. She said the information requested included the number of years active remediation with monitoring has been conducted at those sites, the total preapproved amount for the RAP for each site, and the percentage of monitoring costs as compared to the total RAP costs. She said the data is being compiled and she anticipates presenting the information at the March 2023 Board meeting.

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; 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. 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 closely 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 program year 2021 Certificates of Coverage for the two owners of the three facilities included on the program year 2021 Certificates issued list.

Vice-Chairman Hull moved to ratify the issuance of the 2021 Certificates of Coverage for the facilities listed. Mr. Burks seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Esquivel requested the Board ratify the Director's actions with respect to the denial of the program year 2021 Certificates of Coverage for the five tanks located at the three facilities included on the program year 2021 Certificates denied list.

Vice-Chairman Hull moved to ratify the denial of the 2021 Certificates of Coverage that were listed. Mr. Bryant seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Esquivel requested the Board ratify the Director's actions with respect to the issuance of the program year 2022 Certificates of Coverage for the 99 owners of the 156 facilities included on the program year 2022 Certificates issued list.

Vice-Chairman Hull moved to ratify the issuance of the 2022 Certificates of Coverage for the tanks listed. Mr. Bergman seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Esquivel requested the Board ratify the Director's actions with respect to the denial of the program year 2022 Certificates of Coverage for the 97 tanks located at the 36 facilities included on the program year 2022 Certificates denied list.

Vice-Chairman Hull moved to ratify the denial of the 2022 Certificates of Coverage that were listed. Mr. Bryant seconded. A vote was taken and all members were in favor. The motion passed.

Confirm Next Meeting and Adjourn:

Chairman Rocco said the next Board meeting will be held on Wednesday, March 15, 2023, at 10:00 a.m.

Vice-Chairman Hull made a motion to adjourn the meeting and Mr. Burks seconded. All members were in favor.