



Petroleum Underground Storage Tank Release Compensation Board

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MINUTES OF THE 183rd MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD January 8, 2020 – 10:00 a.m.

BOARD MEMBERS IN ATTENDANCE

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

EX-OFFICIO MEMBERS IN ATTENDANCE

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

OTHERS IN ATTENDANCE

Starr Richmond	Executive Director, PUSTRCB
Madelin Esquivel	Assistant Director, PUSTRCB
Don Leasor	Chief Fiscal Officer, PUSTRCB
Rick Trippel	Claims Supervisor, PUSTRCB
Jonathan Maneval	Executive Assistant, PUSTRCB
Lora Kruse	Administrative Assistant, PUSTRCB
Jahan Karamali	Assistant Attorney General
Howard Silver	Hearing Officer
Bill Kennedy	Kennedy Cottrell Richards LLC
Dan Adams	ATC Group Services LLC
Doug Darrah	ATC Group Services LLC
Chris Smyke	OPMCA

Minutes submitted by:


Jonathan Maneval
Executive Assistant

Call to Order:

Immediately following the 10:00 a.m. public hearing regarding the Board's proposed rule amendments and rule rescission, Chairman Jim Rocco convened the one hundred eighty-third meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, January 8, 2020.

The following members were in attendance: Jim Rocco; Steve Bergman; Don Bryant; Ron Falconi; Scott Fleming; John Hull; Tom Stephenson; Verne Ord, representing Director Sheryl Creed Maxfield, Ohio Department of Commerce; Donna Waggener, representing Director Laurie Stevenson, Ohio Environmental Protection Agency; and Jon Azoff, representing Robert Sprague, State Treasurer of Ohio.

The following member was not in attendance: Robert Cantrell.

Minutes:

Chairman Rocco asked if there were any comments or questions regarding the minutes from the November 20, 2019 Board meeting and there were none. Vice-Chairman Hull moved to approve the minutes. Mayor Falconi seconded. A vote was taken and all were in favor. The minutes were approved as presented.

BUSTR Report:

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

Mr. Ord reported that a new underground storage tank (UST) inspector, Patrick Beckley, was hired to replace an inspector that had left the Bureau. He commented that Mr. Beckley had previously worked in fire prevention at the State Fire Marshal's Office. Mr. Ord reported that Tanya Nell had recently been hired to replace Rick Krueger, who retired at the end of December. He noted that Ms. Nell performed exceptionally well during the interview process.

Mr. Ord reported that the vendor contracts for the responsible party search program had been finalized. He explained that the program is used to identify parties responsible for the investigation and cleanup of petroleum releases. He said between 50 and 68 responsible party searches will likely be performed during the year.

Mr. Ord said there had been no change with the Abandoned Gas Station Cleanup Grant Program since his last report in November. He explained that the program coordinator had left the Development Services Agency to accept a position with the Ohio EPA. He said they are in the process of finding a replacement for her.

Mr. Ord reported that BUSTR staff continues to complete certain state-required training. He said other types of employee development training are being provided through the state's ELM (Enterprise Learning Management) portal. He reported that the release prevention supervisor, Steven Krichbaum, had given a presentation to the Building Environmental Council of Ohio concerning the Bureau's operational compliance requirements. He noted that 51 people attended the training.

Mr. Ord said that the OTTER (Ohio Tank Tracking & Environmental Regulations) database was successfully reconfigured to generate operational compliance statistics reports that are required by the U.S. Environmental Protection Agency (U.S. EPA) as part of the federal grant programs.

Mr. Ord said that no further actions (NFA's) are being generated slowly. He said that the releases that remain are tougher ones to solve, investigate, and address. He noted that within the next few weeks the number of NFA's issued through the BUSTR program will surpass 31,000.

Chairman Rocco said that the U.S. EPA recently published a report, which indicates that Ohio's overall compliance rate was around 45%. He asked if this was due to BUSTR's new rules and Mr. Ord said that it typically takes two cycles for the tank community to become familiar with any new requirements. He explained that inspectors are required to issue citations based upon what they see when they visit a property. He noted that the equipment itself could be compliant but there may be paperwork violations if there is lack of documentation demonstrating that all required testing is being performed. Chairman Rocco stated that he was concerned that half of Ohio's tanks were reported to be out of compliance but the report may misstate the condition of the USTs if they are simply paperwork violations.

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 2019 were submitted to the Auditor of State's Office prior to the December 31, 2019 filing deadline. He pointed out that the final reports, including a copy of the Estimated Unpaid Claim Liability Report, were included with the meeting materials.

Mr. Leasor then introduced Bill Kennedy, a representative from the accounting firm of Kennedy Cottrell Richards, and asked him to discuss the audit reports. Mr. Kennedy thanked Mr. Leasor and expressed his appreciation to the staff for their assistance during the audit process. He explained that the Auditor of State's Office will perform a desk review of the audit which could take anywhere from two weeks to two months. He said once their review is complete, the audit will be certified and it will be publicly released.

Mr. Kennedy directed the members to the Independent Auditor's Report. He said the financial statements include the statement of net position, statement of changes in net position, statement of cash flows, and notes to the financial statements. He pointed out that management's discussion and analysis precedes the financial statements and schedules pertaining to net pension liability and post-employment liability were behind the financial statements. He stated that the scope of the work conducted during the audit process was the same as in previous years. He said, as in years past, their firm issued two reports. He said the first report presents an opinion in the final paragraph of the page following the table of contents. He stated that the firm issued an unmodified opinion, meaning that the financial statements are presented fairly in accordance with generally accepted accounting principles.

Mr. Kennedy then referred members to the second report titled Independent Auditor's Report on Internal Control over Financial Reporting and on Compliance and Other Matters Required by

Government Auditing Standards. He explained that because the Board is a governmental entity, his firm is required to issue a report on internal controls on financial reporting and on compliance. He said that as part of the audit, the internal controls over the financial process are documented and evaluated to determine whether the controls are in place and operating. He said there were no internal control deficiencies that resulted in a finding and no material instances of noncompliance to report. He said during the audit, they looked at the Board's compliance with any material laws or regulations that might impact the financial statements and again found nothing to report. He expressed that overall it was a clean audit with the best opinion that can be offered.

October and November Financials

Mr. Leasor said the October and November financials were emailed to each member.

Mr. Leasor reported as of January 7, 2020, the unobligated account balance is \$29.1 million. He said this amount includes \$13.1 million in STAR Ohio (State Treasury Asset Reserve of Ohio) and the custodial account, and \$16 million invested in U.S. treasuries and U.S. agency callable bonds. He said at the June Board meeting, \$9 million was obligated for the payment of claims and the obligated account balance as of January 7, 2020, is \$5.3 million.

Mr. Leasor reported that, as of November 30, 2019, approximately 98.2% of the budgeted revenues, net of refunds, had been collected. He said information on refunds and fee collections would be presented later with the compliance and fee assessment report.

Mr. Leasor stated that on December 13, 2019, a payment of \$625,000, less attorney's fees, was received from Conoco in accordance with the settlement agreement approved by the Board at its November meeting. He said this money will be included in miscellaneous income in the December financial reports presented at the next meeting. He reported that the claims expense for the month of November was about \$198,000, and to date, approximately \$3.8 million had been paid for claims for fiscal year 2020.

Mr. Leasor commented that on or before February 5, 2020, a payment for \$4.1 million will be made to BP in accordance with the settlement agreement the Board authorized at the November meeting. He explained that this amount combined with the claims expenditures to date total about \$7.9 million of the \$9 million obligated for claim payments for fiscal year 2020. He then requested that the Board appropriate an additional \$4 million to the obligated account for the payment of claims through the end of fiscal year 2020. Chairman Rocco reminded members that the terms of the settlement agreement are for the Board to pay \$12.6 million to BP. He explained that this amount will be paid over a number of years with the initial payment of \$4.1 million being made in February 2020. He said it is necessary to allocate additional money for the payment of claims for the current fiscal year. He then requested a motion to increase the amount obligated for the payment of claims for fiscal year 2020 by an additional \$4 million, which will increase the total obligated amount to \$13 million for the fiscal year. Vice-Chairman Hull so moved and Mr. Stephenson seconded. Chairman Rocco commented that funds are available for the adjustment and would not require any of the existing investments to be cashed out. He then asked if there were any questions and there were none. A vote was taken and all were in favor. The motion passed.

Mr. Leasor stated that, as of November 30, 2019, expenses should be around 41.7% of the amount budgeted for the fiscal year. He reported that operating expenses for the month of November were approximately \$174,000. He said postage expenses were 72.5% of the amount budgeted. He said this was due to postage fees for the final quarter of fiscal year 2019 being paid in August of fiscal year 2020. He said these charges include fees for the annual fee statement mailing, which is sent by certified mail. He reported that other expenses are at or below where they should be at this time in the fiscal year.

Compliance and Fee Assessment Report:

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

Ms. Esquivel reported, as of December 31, 2019, refunds totaling \$36,235 have been paid to 40 tank owners for the 2019 program year. She said, as of December 31, 2019, there are 2,719 pending refunds totaling \$1,421,412. She said that \$7,872 in refunds was used to offset outstanding fees. She said the refunds paid and the credits applied to outstanding fees total \$44,107, which is 20% of the refund goal of \$225,000 that was set for the program year.

Ms. Esquivel reported, as of December 31, 2019, the fees collected by the Attorney General's Office and Special Counsel less collection costs totaled \$32,486. She said no accounts have been certified to the Attorney General's Office for collection since the November meeting.

Ms. Esquivel said 14 Orders Pursuant to Law were under appeal. She said information to support 11 of the appeals is expected. She said, for two of the appeals, information was received and is currently under review. She said that a hearing was held for one of the appeals. She said there are currently no Determinations to Deny a Certificate of Coverage under appeal.

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 January 2, 2020, a total of 2,872 Certificates of Coverage have been issued thus far for program year 2019. She said there are 169 Applications for Certificates of Coverage currently in process. She said that, as of January 2, 2020, a total of 30 Notifications of Pending Denial had been issued and there are nine unresolved Determinations to Deny a Certificate of Coverage.

Ms. Esquivel stated that there are 35 uncashed refund checks totaling \$40,153. She said there are five owners with pending refunds totaling \$3,840 who have been sent letters notifying them that more information is needed before their refunds may be issued. She said there are 36 owners with pending refunds totaling \$62,205 for which information had been requested, but no responses have been received.

Claims Reports:

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

Mr. Trippel reported that, as of January 2, 2020, the total maximum liability of in-house open claims is just over \$32 million. He said that using the average claim payout ratio from the first six months of the current program year, which is 78.4%, the actual anticipated claim liability of unpaid in-house claims is just over \$25 million. He commented that there will be a significant reduction in the liability of the open claims due to adjustments resulting from the BP settlement.

Mr. Trippel reported that, as of January 2, 2020, a total of 1,628 claims with a total face value above the deductible amount were pending review. He said that settlement determination letters that were mailed in the month of December were predominantly for claims that were received in the months of July and August. He said that currently a total of 30 claim settlement determinations were under appeal. He commented that 16 of the appeals were related to one release site and six were related to another site. He explained that there are only eight appeals associated with individual releases and noted that supporting information is expected for 25 of the appealed claims.

Mr. Trippel said that, in the first six months of the program year, 258 claims were received and a total of 254 claims were settled or closed. He noted that 10 of the closed claims were for sites with NFAs and the claims were below the deductible amount. He stated that the average payout per claim application was \$14,840 and the average claim payout was 78.4% of the net value (face value – deductible). He said on average 18.8% of the claim face value was disallowed.

Mr. Trippel reported that, during the first half of the program year, 59 eligibility applications were received and 58 eligibility determinations were issued. He said of these eligibility determinations, 38 were approved and 20 were denied. He said that four applications were denied for no releases, two were denied for late-filing, three were denied for abandoned or out-of-compliance USTs, and 11 were denied for no corrective action work being required by BUSTR. He said, as of January 2, 2020, a total of 63 eligibility applications are pending review. He said that more information has been requested for nine of those applications. He noted that four eligibility determinations are currently under appeal. He said that 22 of the applications were submitted without the reports necessary to evaluate them; 16 of which were submitted by one owner.

Mr. Trippel reported that, as of January 2, 2020, a total of 36 cost pre-approval requests are pending review. He said during the first half of the program year 61, requests for cost pre-approval had been received and 66 cost pre-approval notifications had been issued.

Unfinished Business:

Suspended Claim Review

Chairman Rocco directed members to a letter received from Premcor concerning the suspended review and payment of their claims. He reminded members that the Board had suspended the review and settlement of in-house claims for certain companies for which the Board had authorized the filing of a complaint. He said that, in their letter, Premcor is seeking payment of the \$1.6 million in claims submitted for reimbursement because the BP lawsuit was settled. He explained that the Premcor-related claims are associated with Valero, which is a different set of claims with no relationship to the BP claims that were resolved through the settlement. He noted that the members were provided a copy of Executive Director Starr Richmond's response, which states that the review and reimbursement of the

Premcor claims will remain suspended until the matters involving Valero are settled. He explained that no action was necessary by the Board and stated that he simply wanted the members to be aware of the issue.

New Business:

Administrative Appeal

Chairman Rocco called upon Howard Silver, the Board's hearing officer, to present the Report and Recommendation regarding the appeal of the Order Pursuant to Law issued to Lanny E. Gilbert Jr.

Facility #24337-0001, Owner – Lanny E. Gilbert Jr.

76 Benedict Avenue, Norwalk

Hearing Officer Silver said the appeal being presented concerned the assessment of Financial Assurance Fund (Fund) fees for underground storage tanks located in the City of Norwalk, in Huron County. He stated that on April 9, 2018, Lanny Gilbert purchased an abandoned gas station at a Sheriff's sale, which had three underground storage tanks on it. He noted that the station had been in operation until 2005 and then it was abandoned and eventually fenced off. He explained that since Mr. Gilbert had no intention of operating the station, he removed the tanks in October of 2018.

Mr. Silver stated that shortly after the tanks were removed, the Board's staff sent to Mr. Gilbert a fee assessment notification indicating that, as the owner of the tanks located at the site, he was responsible for payment of the annual per-tank Fund fees for the program years in which he owned the tanks as well as a transfer of ownership fee. Mr. Gilbert did not pay the fees, and in accordance with the applicable statute, the Fund's Director issued a Notification of Non-Compliance to Mr. Gilbert directing him to make payment within 30 days. After the 30 days had passed without payment, the Fund's Director sent Mr. Gilbert correspondence known as an Order Pursuant to Law directing him to make payment and assessing a late payment fee of \$100 per tank for each month payment was not received, up to a maximum of \$1,000 per tank.

Mr. Silver explained that a feature of the Director's Order is that it allows for the tank owner to file an appeal, which Mr. Gilbert timely did. Mr. Silver said that a hearing was conducted with the Board's Assistant Attorney General representing the Fund's Director and Mr. Gilbert representing himself. Mr. Silver said that at the hearing Mr. Gilbert testified that he purchased the property with the intention to improve it for the benefit of the community. He said the city was anxious for the sale to go through and waived all property taxes that had been attached to it since 2005. Mr. Gilbert stated that as part of his due diligence he discussed the tanks with the local fire department, but was never told of any fees associated with the tanks. He argued that he should not be treated as a tank owner because he had no intention of operating the tanks. Mr. Gilbert also pointed out that the statute requires that notification of the annual fees to be directed to tank owners by May first of each calendar year, but the fee notification was not sent to him until October, after the tanks had been removed. Mr. Silver commented that there was no evidence in the record that the Board had any reason to know that ownership of the property had transferred prior to May first.

Mr. Silver explained that when Mr. Gilbert acquired the property he became the owner of underground storage tanks as defined by statute and unfortunately, he simply did not fully understand the

ramifications of being a tank owner and the required participation in the Fund program administered by the Board. Mr. Silver said that because Mr. Gilbert was a responsible person, the Director was correct in her determination that he owed the Fund fees during the program years in which he owned the tanks and he recommended the Board uphold the Director's Order.

Mayor Falconi expressed that he felt Mr. Gilbert was trying to do something positive for the community but has now gotten caught up in red tape. He said given the property was abandoned and unutilized for over a decade, and the tanks are now removed, he felt the fees should be waived. Director Richmond commented that Mr. Gilbert was offered a reduced amount through the Ability to Pay program. However, he wanted to proceed with a hearing, which is why the hearing was held. She said that prior to the Board meeting, Mr. Gilbert sent an email with an offer to resolve the fees. Vice-Chairman Hull said he was sympathetic to this particular situation and suggested the Board take no action concerning the Hearing Officer's recommendation and allow the Director to settle the issue at her discretion. After a brief discussion, Vice-Chairman Hull moved to remand the appeal back to Ms. Richmond with the direction to negotiate a settlement with Mr. Gilbert. Mr. Stephenson seconded. Chairman Rocco asked if there was any further discussion and there was none. A vote was taken and all were in favor. The motion passed.

Hardship Application

Chairman Rocco called upon Madelin Esquivel, Assistant Director, to present the hardship application.

Claim # 20308-0001/11/30/17, Owner – Kiran S. Atwal LLC

Ms. Esquivel said that Kiran S. Atwal LLC is the responsible party for a 2017 release that was discovered at 200 North Sunset Drive in Piqua, Ohio. She said, as the owner of the LLC, Mr. Kanwaljit Atwal is requesting the Board grant hardship status to the LLC.

Ms. Esquivel explained that this is the second request for hardship status, and to date, the Fund has reimbursed \$10,700 for corrective action costs for the release. She noted there are currently no unsettled claims in house and the cost of corrective actions for the next year is estimated to be \$20,000.

Ms. Esquivel stated that the 2018 tax forms submitted with the application indicate the LLC reported gross income of \$70,800, with a net income of \$4,200. She said for the years 2017 and 2016; the LLC reported gross income was \$40,000 and \$43,700, with net losses of \$8,300 and \$6,800 respectively. She said the U.S. EPA model estimates a less than 50% probability the LLC can afford the \$20,000 in corrective action costs anticipated to be incurred within the next year.

Ms. Esquivel said the Director is recommending the Board approve the application and grant hardship status to Kiran S. Atwal LLC. Vice-Chairman Hull moved to approve the application and Mayor Falconi seconded. A vote was taken and all members voted in the affirmative. The motion passed.

Certificates of Coverage – Ratifications:

Chairman Rocco called upon Ms. Esquivel 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 lists behind Tabs 8 and 9 are listings of facilities that had been issued or denied a program year 2018 or 2019 Certificate of Coverage since the November meeting.

Ms. Esquivel said the process used to review the fee applications and issue or deny a Certificate of Coverage includes a review for completeness to determine full payment was received; financial responsibility for the deductible has been demonstrated; and the owner has certified with his signature that he is in compliance with the State Fire Marshal's rules for the operation and maintenance of petroleum underground storage tanks. She said if these requirements are met and if the tanks existed in previous years, a Certificate for the subject tanks has been issued to the owner in at least one of the prior two years, then a Certificate of Coverage is issued. She said if a Certificate has not been issued in one of the prior two years and the tanks existed during those years, the owner must comply with rule 3737-1-04.1 by demonstrating the tanks are in compliance with the Fire Marshal's rules for the operation and maintenance of USTs.

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

Ms. Esquivel requested the Board ratify the issuance of the 2018 program year Certificates of Coverage for the one facility included on the list behind Tab 8.

Vice-Chairman Hull moved to ratify the issuance of the 2018 Certificates of Coverage for the facility listed. Mr. Fleming seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Esquivel stated that no determinations denying a 2018 program year Certificate of Coverage were issued since the November meeting.

Ms. Esquivel requested the Board ratify the issuance of the 2019 program year Certificates of Coverage for the 102 owners of the 352 facilities included on the list behind Tab 9.

Vice-Chairman Hull moved to ratify the issuance of the 2019 Certificates of Coverage for the facilities listed. Mr. Ord seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Esquivel requested the Board ratify the denial of the 2019 program year Certificates of Coverage for the 33 tanks located at the 13 facilities on the list behind the Tab 9 green divider page.

Vice-Chairman Hull moved to ratify the denial of the 2019 Certificates of Coverage that were listed. Mr. Ord seconded. A vote was taken and all members were in favor. The motion passed.

Board Member Vacancy:

Chairman Rocco stated that Stephen Hightower II had resigned resulting in one seat on the Board being vacant. He noted that Mr. Hightower represented businesses that own petroleum USTs and explained that due to the current makeup of the Board, any individual to be considered for appointment would

need to be affiliated with the Democratic Party. He invited members to recommend individuals to be considered for appointment.

Executive Session:

Chairman Rocco requested a motion to enter into executive session with counsel pursuant to Ohio Revised Code 121.22(G)(3) to discuss matters of pending or imminent court action. Mr. Ord so moved. Mr. Fleming seconded. The Chairman called for a roll call. The following members voted in the affirmative: Ms. Waggener and Messrs. Azoff, Bergman, Bryant, Falconi, Fleming, Hull, Ord, Stephenson, and Rocco. There were no nays. The motion passed. Mr. Fleming stated that he would recuse himself from the discussions.

Reconvene Meeting

The Board adjourned from executive session and reconvened the public meeting. Mr. Fleming did not return to the meeting.

Chairman Rocco requested a motion to authorize outside counsel to proceed with negotiations in consultation with the Executive Director, Chairman, Vice-Chairman, and Assistant Attorney General and the filing of a complaint when the appropriate documents are approved by the Executive Director, Chairman, Vice-Chairman, and Assistant Attorney General in the matter currently pending against Sunoco Incorporated. Mr. Stephenson so moved and Mayor Falconi seconded. The Chairman clarified that the motion is to authorize negotiations and also to authorize the filing of a complaint. A vote was taken and the motion passed. Mr. Fleming was not present for the vote.

Confirm Next Meeting and Adjourn:

Chairman Rocco said that the next Board meeting will be held on Wednesday, March 11, 2020, at 10:00 a.m. The Finance Committee will be meeting at 9:00 a.m. prior to the Board meeting.

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