



# Petroleum Underground Storage Tank Release Compensation Board

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## MINUTES OF THE 202<sup>nd</sup> MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD January 10, 2024 – 10:00 a.m.

### BOARD MEMBERS IN ATTENDANCE

Jim Rocco  
Steve Bergman  
Don Bryant  
Larry Burks  
Scott Fleming  
Tom Stephenson  
Dan Ridi

### 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  
Harold Anderson, representing Robert Sprague, State Treasurer of Ohio

### OTHERS IN ATTENDANCE

Starr Richmond	Executive Director, PUSTRCB
Jonathan Maneval	Assistant Director, PUSTRCB
Vijetha Deshineni	Chief Fiscal Officer, PUSTRCB
Cindy Stauffer	Compliance Supervisor, PUSTRCB
Hannah Brame	Claims Supervisor, PUSTRCB
Dave Gram	Claims Analyst, PUSTRCB
Beth Fligner	Assistant Attorney General
Danny Sklenicka	Rea & Associates, Inc.
Leigha Moran	Rea & Associates, Inc.
Dan Adams	Atlas Technical Consultants

Minutes submitted by:

  
Jonathan Maneval  
Assistant Director

**Call to Order:**

Chairman Rocco convened the two hundred-second meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, January 10, 2024.

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

**Minutes:**

Chairman Rocco asked if there were any comments or questions regarding the minutes from the November 29, 2023 Board meeting and there were none. Vice-Chairman Stephenson moved to approve the minutes and Mr. Fleming 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 BUSTR continues to be extremely busy. He said funding for 60 responsible party searches was provided during this grant year and noted that a focus of the responsible party searches is U.S. Environmental Protection Agency (U.S. EPA) environmental justice criteria. He stated that 26 of the searches have been completed by the three vendors working on the responsible party searches.

Mr. King reported that BUSTR is fully staffed, and they continue to work a hybrid schedule with some in-office days and some telework days. He said 28 NFAs (no further actions) were issued in the previous month and reported that 104 NFAs had been issued so far for fiscal year 2024, which he said is on pace to achieve the U.S. EPA goal to close out about 396 to 420 NFAs. He said BUSTR's year-end report ranked Ohio in the top five nationally in the way the program is managed for both inspections and corrective actions. He said as of the end of December 2023, there were 21,111 registered tanks, 3,364 registered owners, and about 6,900 registered facilities. He reported they are working through 2,200 active releases and there are 1,700 active closures. He said 32,434 NFAs have been issued throughout the existence of the program. He said the inspection team is in the second year of the three-year inspection cycle, and so far 3,384 inspections and 2,357 follow-up inspections have been completed. He noted that a follow-up inspection is usually generated when something is not occurring correctly at the facility.

Mr. King said BUSTR received word in December that the Abandoned Gas Station Cleanup Grant Fund is being sunset, and the Department of Development is working to finish up the sites currently in their system. He said Class C sites are no longer being referred over because it is no longer available. Chairman Rocco asked what is meant by a Class C site and Mr. King explained that it is a release site that BUSTR has designated as having no responsible person to clean up the site. Chairman Rocco

asked if there was no desire to extend it and Mr. King said there is a meeting scheduled with the Department of Development in early February to discuss the availability of funding through the brownfield remediation program. He noted the Governor allocated about \$1 million to each county but expressed concerns that it might be difficult for owners of small lots to compete for grant money through the brownfield program. Chairman Rocco said the program had particularly benefitted small municipalities who had taken over a property with an abandoned tank on it. He said he hoped the funding through the brownfield program would be separate from the more traditional brownfield grant and Mr. King agreed.

Mr. King reported that progress on the new database system is continuing slowly. He said the facility module page with the tank information, contact pages, and GIS layers is completed and phase two, which is the permitting module, is being finished. He said the next module will be registration and followed by the corrective action, inspection, and legal and enforcement modules. He said the database will be very interactive and allow for work flows to be updated within the system, and no longer require a work order request to go through the Department of Commerce.

Chairman Rocco asked Mr. King his thoughts on tank compliance considering the number of follow-up inspections needed because something was found. Mr. King said the biggest issues are record keeping issues and testing and inspection of secondary containments. Mr. King said Ohio's tank compliance rate (TCR) is just under 59% and average TCR for the region is about 60%. He noted that the only state in the region with a higher rate is Wisconsin, which has a TCR of 70%. He said a lot of the compliance rate has to do with older systems and the Chairman stated that many tanks were replaced in the 1990's so they are getting close to 30 years old, and some might be older. Mr. King said in instances that are non-emergent paperwork issues, the owner is given 30 days to deal with it and the inspector typically does not have to go back to revisit the site. He said if something is going on that is an environmental or safety issue that could be a potential release or cause harm to the public, the site is being moved to enforcement quicker. He said operators are much quicker to respond when they start seeing penalties assessed. The Chairman said tank compliance is important to the Board because, in theory, there should be less of an impact and be less expensive to clean up if tanks are in compliance. He said if there are really severe releases with major losses of product, it is because of failure to test or failure of equipment that was not tested.

Ms. Waggener asked what funding was supporting the Abandoned Gas Station Grant Fund and Mr. King said the program was initially funded through legislation and the legislation itself was sunset. Ms. Waggener asked if the Ohio EPA was part of the conversation about the program being sunset and Mr. King indicated he had conversations with Mark Johnson concerning it. Ms. Waggener said it might be time for some new legislation and commented that Ohio EPA has a large brownfield grant from the U.S. EPA that could be a different funding source to take care of some of the Class C sites. Chairman Rocco said the key is for there to be a separate pile of money and a separate application process so only small municipality-type owners are competing for that money. Mr. Burks commented that from a municipality perspective a study itself is as important as pulling the tanks and the Chairman said there had been grant funding for both tank removals and property assessments. Mr. King gave a brief history of how the grant program had worked and Ms. Waggener mentioned that they will be going through state budgets in the summer and to let her know if there is anything legislatively they can do.

## **Financial Reports:**

Chairman Rocco called upon Vijetha Deshineni, Chief Fiscal Officer, to present the financial reports.

### ***Audit Report***

Ms. Deshineni stated that the audit reports and financial statements for fiscal year 2023 were submitted to the Auditor of State's Office prior to the December 31, 2023 filing deadline. She pointed out that the audit report was provided to the Board members with the other meeting materials.

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

Mr. Sklenicka introduced himself and Leigha Moran who served as the engagement manager for the audit for several years. Mr. Sklenicka explained that this is the final year of the Rea & Associates contract with the Board, and they are currently going through the Auditor of State's bidding process.

Mr. Sklenicka directed members to the audit packet and explained that the first couple of pages are the post-audit letter, which is a summarization of the audit results. He said their audit plan was presented in October 2023, the field work was conducted in October and November 2023, and the audit reports were submitted to the Auditor of State's Office in December 2023. He said the audit is currently under a desk review by the Auditor's Office and the financial statements are not considered final until the Auditor of State completes its desk review, which he expected to be by the end of the month.

Mr. Sklenicka said the audit was conducted in accordance with government auditing standards since the Board is a state government organization. He noted the Board adopted GASB (Governmental Accounting Standards Board) 96, which brings leases for subscription-based IT arrangements for things like cloud computing and Microsoft Office subscriptions onto the balance sheet. He said an analysis was done and there was no significant impact from adopting the standard. He said there was a remeasurement of the office lease as a result of the office lease being extended, and the bigger number is shown on the balance sheet, which they reviewed in accordance with GASB 87.

Mr. Sklenicka reported that there were no significant or unusual transactions in the financial statements. He noted that the firm used a risk-based approach to the audit where they focus on areas with higher estimation that may pose more risk. He said the allowance for the collectability of outstanding tank fees and the reserve for unpaid claims were two areas that they spent significantly more time on. He said they engaged an independent actuary to review the calculation of the loss reserve and make sure management's estimate is reasonable. He said the actuary reviewed the key assumptions and measurements, and the estimates do appear reasonable and materially correct for the financial statements. He said there were no audit adjustments identified during the audit but mentioned there was one uncorrected adjustment on the supplemental schedule. He said if there were any disagreements with management or outside consultants, those would be reported, but there were not any disagreements.

Mr. Sklenicka said a couple of years ago an auditing standard changed that put an onus on audit firms to call out indicators that could present a going concern of any financial difficulties. He said the Board does have a significant deficit in the unrestricted net position, which was discussed with management.

He mentioned that because the Board looks at its tank fees and cash flow annually, they do not consider it to be an issue with going concern. He pointed out the one uncorrected adjustment shown in the supplemental schedule concerned one settlement with an oil company that was recorded at the gross value instead of the net value. He said management deemed it immaterial, and they agreed.

Mr. Sklenicka then called on Ms. Moran to provide a brief overview of the audit report. Ms. Moran directed members to the opinion, which she pointed out is presented in the first section of the report. She said it is an unmodified or clean opinion with no issues brought to their attention that they would have to report under government auditing standards as a finding within the audit report. She then directed members to the independent auditor report on internal control. She said if they had come across any compliance or internal control problems, they would have to report these findings. However, there were no reportable findings.

Ms. Moran directed members to the statement of revenue and expenses and pointed out the net position increased by \$1.5 million this year. She said this is a step in the right direction based upon the negative net position Mr. Sklenicka mentioned earlier.

Mr. Sklenicka said there were no findings, no material weaknesses, no significant deficiencies and therefore, it is a clean opinion and a great audit cover to cover overall. He said having no audit adjustments and no findings is a testament to the good financial reporting and management. He thanked Director Richmond and the staff for their work and cooperation in helping to complete the audit.

Ms. Deshineni said the Auditor of State has issued requests for proposals for selecting new auditors, and the deadline for firms to submit their proposals is January 17, 2024. She said the proposals would be provided to management on February 13, 2024 for scoring and the scoring is due to the Auditor of State on February 20, 2024.

### ***November Financials***

Ms. Deshineni directed members to the November financials in the Board meeting materials.

Ms. Deshineni reported, as of January 9, 2024, the unobligated account balance in STAR Ohio (State Treasury Asset Reserve of Ohio) and the custodial account is \$5.76 million and the obligated account balance for the payment of claims is \$4.76 million. She said as of November 30, 2023, the unobligated balance in U.S. treasuries and U.S. agency callable bonds is \$14.67 million.

Ms. Deshineni reported that, as of November 30, 2023, approximately 98% of the budgeted revenues, net of refunds, had been collected. She said information on refunds and fee collections would be presented as part of the compliance and fee assessment report.

Ms. Deshineni said as of November 30, 2023, we are about 42% into the fiscal year and interest income is ahead of projections at about 50.5% of the budgeted amount. She reported the claims expense for the month of November 2023 was \$535,000, and to date, just under \$3 million has been paid for claims in fiscal year 2024. She said this is 36% of the \$8 million obligated by the Board for the payment of claims for the fiscal year.

Ms. Deshineni noted temporary services expenditures were used for one position and that position was filled with a full-time employee effective November 20, 2023. She said additional temporary services expenses are not anticipated this fiscal year. She reported postage expenses were at 57% of the amount budgeted and explained that this was due to postage fees for the final quarter of fiscal year 2023 being paid in August of fiscal year 2024. She said these charges include fees for the annual fee statement mailing, which is sent by certified mail. She reported that legal and professional expenses were 40% of the amount budgeted. She noted that \$49,000 in legal and professional expenses were paid in November 2023, and included payments to Rea & Associates and to the Attorney General's Office for collections costs. She reported the total operating expenses for November 2023 were \$185,325.

**Compliance and Fee Assessment Report:**

Chairman Rocco called on Cindy Stauffer, Compliance Supervisor, to present the compliance and fee assessment report.

Ms. Stauffer stated that the information being reported reflects numbers as of December 31, 2023, unless otherwise noted. She reported that refunds totaling \$58,625 had been paid since July 1, 2023. She said there are currently 2,439 pending refunds, which total \$1,355,835. She said \$5,850 of pending refunds had been used to offset outstanding fees during this program year. She said since July 1, 2023, the fees collected by the Attorney General's Office and Special Counsel less collection costs totaled \$32,349. She reported that no accounts had been sent to the Attorney General's Office for collection since July 1, 2023.

Ms. Stauffer said two Orders Pursuant to Law are currently under appeal and information to support those appeals is expected. She said two Determinations to Deny a Certificate of Coverage were under appeal and an appeal hearing is scheduled for those appeals.

Ms. Stauffer stated that one Ability to Pay Application is pending review. The Ability to Pay program allows former underground storage tank (UST) owners experiencing financial difficulty to apply for and receive a determination of their ability to pay delinquent fees.

Ms. Stauffer reported that, as of January 2, 2024, Certificates of Coverage had been issued to 2,610 owners for program year 2023. She said there are 224 Applications for Certificates of Coverage currently being processed. She said for program year 2023, there are 88 owners with unresolved Pending Denials and commented that no Determinations to Deny a Certificate of Coverage had been issued for program year 2023.

Ms. Stauffer stated that there are 46 uncashed refund checks totaling \$66,383. She said there are 15 owners with potential refunds totaling \$80,901 to whom more information request letters had been sent notifying them that additional information is needed before the refund may be issued. She said a second more information request letter will be issued to these owners. She said 39 owners with possible refunds totaling \$63,815 have not responded to the final more information request letters.

**Claims Reports:**

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

Ms. Brame said during her report at the previous meeting, she misspoke and indicated that labor rates were reevaluated, and typical rates were increased in January of 2022. She said the increase in labor rates was done in July of 2022.

Ms. Brame reported, as of January 2, 2024, the total maximum liability of in-house open claims is approximately \$9.39 million. She said using the claim payout ratio of 77%, which is the average ratio over the past five years, the anticipated payout of unpaid in-house claims is about \$7.23 million.

Ms. Brame reported, as of January 2, 2024, a total of 538 claims with face values above the deductible amount were pending review and noted that review of one claim is being held pending receipt of requested information. She reported that the claims staff are currently reviewing claims received prior to May 2023. She stated that, as of January 2, 2024, a total of 29 claim determinations were under appeal. She explained that these appeals pertain to only seven release sites, as there are multiple appeals for two of those sites. She noted the staff is waiting for supporting information for 11 appeals and additional information provided is under review for 18 appeals. She said no appeals have been received since the November 2023 meeting.

Ms. Brame stated that, as of January 2, 2024, a total of 213 claims were received and a total of 280 claim determinations were issued this program year. She noted that no payment could be issued for nine 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 \$13,748 and the average claim payout is 71.7% of the net claim value (face value – deductible). She noted that on average 23.1% of the claim face value was disallowed as non-reimbursable. Chairman Rocco pointed out that the average disallowed is going up and Ms. Brame said that average is being affected by one or two atypical claims that were settled this program year that had substantial disallowed costs for either lack of cost pre-approval or due to there being an ineligible release at the site and costs were attributed to the ineligible release. The Chairman said looking at the previous year, the percent had gone from under 20% to over 20%. Ms. Brame said the reintroducing of previously held claims may have affected that percentage and mentioned that some claims have a settlement agreement that results in 75% payment.

Ms. Brame reported so far for program year 2023, a total of 47 eligibility applications were received and 42 eligibility determinations were issued. She said of these eligibility determinations, 29 were approved and 13 were denied. She said the reasons for denial included three for no release demonstrated, two for late filing of the application, two for lack of a valid Certificate of Coverage, three for out of compliance USTs, and three for no corrective actions being required by BUSTR. She reported that, as of January 2, 2024, a total of 100 eligibility applications were open. She noted that 14 applications were unreviewable until the necessary reports are received, and more information has been requested for three applications. She noted that, as of January 2, 2024, nine eligibility determinations were under appeal. She said additional information is expected for four appeals, information for four appeals has been received and is under review, and a hearing is scheduled for one appeal.

Ms. Brame reported, as of January 2, 2024, a total of 64 cost pre-approval requests were received. She said the cost pre-approval requests include 12 requests for new remedial action plans; 26 requests for annual costs for remedial action plans or free product recovery; one request for an interim response

action requiring BUSTR approval; 13 requests for either Tier 3, monitoring or calibration plans; six cost exceedance notifications; and six voluntary requests for cost pre-approval. She said as of January 2, 2024, a total of 54 cost pre-approval notifications had been issued and 51 cost pre-approval requests were pending review.

**Certificates of Coverage – Ratifications:**

Chairman Rocco called on Cindy Stauffer, Compliance Supervisor, to present the lists of owners who have been issued a Certificate of Coverage for ratification by the Board.

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

Mr. Bryant moved to ratify the issuance of the 2022 Certificates of Coverage for the facilities listed. Mr. Fleming seconded. A vote was taken, and all members were in favor. The motion passed.

Ms. Stauffer stated that no determinations denying a program year 2022 Certificate of Coverage had been issued since the last Board meeting.

Ms. Stauffer requested the Board ratify the Director's actions with respect to the issuance of the program year 2023 Certificates of Coverage for the 94 owners of the 619 facilities included on the program year 2023 Certificates issued list.

Mr. Fleming moved to ratify the issuance of the 2023 Certificates of Coverage for the facilities listed. Mr. Anderson seconded. A vote was taken, and all members were in favor. The motion passed.

Ms. Stauffer stated that no determinations denying a Certificate of Coverage had been issued for program year 2023.



**Executive Session:**

Chairman Rocco stated that an executive session was needed and requested a motion to enter executive session with counsel pursuant to Ohio Revised Code 121.22(G)(3) to discuss matters of pending or imminent court action. Vice-Chairman Stephenson so moved, and Mr. Burks seconded. The Chairman called for a roll call. The following members voted in the affirmative: Ms. Waggner and Messrs. Bergman, Bryant, Burks, Fleming, Ridi, Stephenson, Anderson, King, and Rocco. There were no nays. The motion passed.

***Reconvene Meeting***

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

**Confirm Next Meeting and Adjourn:**

Chairman Rocco said the Rules Committee would be meeting after the Board meeting and noted that all of the Board's rules are up for review as part of the five-year rule review process. He said the next Board meeting will be held on Wednesday, March 13, 2024, at 10:00 a.m.

Mr. Fleming made a motion to adjourn the meeting and Mr. Bryant seconded. All members were in favor.