



Petroleum Underground Storage Tank Release Compensation Board

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MINUTES OF THE 153rd MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD

June 16, 2014

BOARD MEMBERS IN ATTENDANCE

Jim Rocco
John Hull
Steve Hightower
Cheryl Hilvert
Don Kuchta
Tom Stephenson

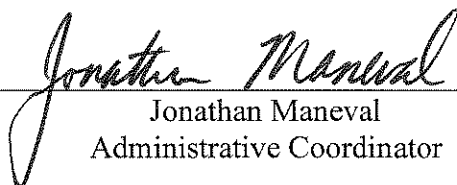
EX-OFFICIO MEMBERS IN ATTENDANCE

Bill Hills, representing Director Andre Porter, Ohio Department of Commerce
Chris Geyer, representing Director Craig Butler, Ohio Environmental Protection Agency
Bob Field, representing Josh Mandel, State Treasurer of Ohio

OTHERS IN ATTENDANCE

Starr Richmond	Executive Director, PUSTRCB
Madelin Esquivel	Assistant Director, PUSTRCB
Don Leasor	Chief Fiscal Officer, PUSTRCB
Cindy Duann	Claims Supervisor, PUSTRCB
Jonathan Maneval	Administrative Coordinator, PUSTRCB
Nicole Waits	Account Examiner, PUSTRCB
Shalonda Lee	Coverage Analyst, PUSTRCB
Homayoun Sharifi	Environmental Claims Analyst, PUSTRCB
Carla Dowling-Fitzpatrick	Assistant Attorney General
Dan Adams	Cardno ATC
Will Latt	Speedway, LLC
Rob Eshenbaugh	API Ohio
Brent McPherson	BJAAM Environmental, Inc.

Minutes submitted by:


Jonathan Maneval
Administrative Coordinator

Call to Order:

Chairman Rocco convened the one hundred fifty-third meeting of the Petroleum Underground Storage Tank Release Compensation Board on Monday, June 16, 2014.

The following members were in attendance: Jim Rocco; John Hull; Stephen Hightower; Cheryl Hilvert; Don Kuchta; Tom Stephenson; Bill Hills, representing Director Andre Porter, Ohio Department of Commerce; Chris Geyer, representing Director Craig Butler, Ohio Environmental Protection Agency; and Bob Field, representing Josh Mandel, State Treasurer of Ohio.

Minutes:

Chairman Rocco asked if there were any comments or questions regarding the minutes from the March 20, 2014 Board meeting, and there were none. Vice-Chairman Hull moved to approve the minutes. Mr. Geyer seconded. A vote was taken and all members voted in the affirmative. The minutes were approved as presented.

BUSTR Report:

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

Mr. Hills reported that two temporary service employees who are scanning and indexing BUSTR files would continue to work through the end of June. He said one of BUSTR's field inspectors that previously transferred to an elevator inspection position had decided to return to the field inspector position with BUSTR.

Mr. Hills reported that the Revolving Loan Fund Application is in its final review by management and would be available soon. This fund will provide financing to political subdivisions for the removal of abandoned underground storage tank systems. He noted that no monies would be disbursed from the fund prior to July 1, 2014.

Mr. Hills stated BUSTR was awarded LUST (leaking underground storage tank) grant monies for fiscal year 2014 for the purpose of performing responsible party searches for properties with petroleum UST releases. He reported that 89 of the 109 responsible party searches had been completed and returned by the vendors to BUSTR for review, and the remaining 20 would be completed prior to June 30, 2014.

Chairman Rocco questioned how many of the responsible party searches identified no viable responsible party to perform the cleanup. Mr. Hills said that he could not provide specific statistics concerning the information obtained through the searches, but noted that the review of certain files did result in the release being reclassified.

Mr. Hills said there are likely 600 – 700 properties with petroleum underground storage tank releases for which a responsible party search is needed, and only 109 files have been distributed to vendors. He indicated that federal funding may continue to be provided for the continuation of the responsible party search program.

Mr. Hills stated some of the federal leaking underground storage tank grant monies that were cut two years ago had been restored for fiscal years 2015/2016. He said this would allow for BUSTR to hire two additional personnel.

Mr. Hills said the UST (underground storage tank) program received a 12% retroactive cut in funding. He noted that BUSTR would adjust for this funding cut by not filling a vacant field inspector position, and by not purchasing new vehicles.

Mr. Hills reported that all of BUSTR's corrective action and release prevention staff attended an eight hour OSHA (Occupational Safety and Health Administration) refresher training course and completed their annual physicals.

Mr. Hills reported for the week ending June 7, 2014, that there were 47 new inspections performed for a total of 2,983 inspections for the three-year inspection cycle ending June 30, 2016. He said that six NFAs (no further actions) were generated during this same time period for a total of 399 for the grant cycle ending September 30, 2014.

Mr. Hills stated that, as of June 7, 2014, there were about 21,900 registered USTs, and 3,700 owners of 7,463 registered facilities.

Financial Report:

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

February, March and April Financials

Mr. Leasor said the February, March and April financials were emailed to each member. He asked if there were any questions or concerns regarding these reports, and there were none. He said since the fiscal year 2014 annualized revenues and expenses would be discussed as part of the operating budget, he would not review the monthly financial reports.

Operating Budget

Mr. Leasor said the Operating Budget behind tab four represents the approved budget and actual annualized expenditures for fiscal year 2014, and also presents the recommended budget for fiscal year 2015.

Mr. Leasor reported tank revenue for fiscal year 2014 was budgeted at \$14 million for 20,700 USTs, and actual revenues were \$122,000 over the budgeted amount. He recommended tank revenue for fiscal year 2015 be budgeted at \$11.9 million. He said this estimate was built on the assumption that fees will be received for 20,600 tanks, and 26% of these USTs will be assured at the reduced deductible. He noted the annual fees were reduced by \$100 per tank to \$500 per tank for coverage at the standard \$55,000 deductible and \$700 per tank for coverage at the reduced \$11,000 deductible.

Mr. Leasor said property transfer fees are projected to be \$90,000 for fiscal year 2015. He said a portion of the transfer fees were assessed during the current fiscal year, but are anticipated to be collected in fiscal year 2015. He stated prior years' fees collected, less refund amounts, are projected to be \$400,000 in fiscal year 2015.

Mr. Leasor stated interest income is \$6,000 below the amount budgeted for fiscal year 2014 due to the interest rate for STAR Ohio being lower than anticipated. He said the projected interest income for fiscal year 2015 is \$50,100. He said this anticipated interest income is based on a STAR Ohio interest rate of .02% plus anticipated interest of \$46,000 to be earned on the investments in US Treasuries and US Agency Callable Bonds.

Mr. Leasor reported miscellaneous income for fiscal year 2014 was \$18,000. He said the Board received \$17,500 for the use of a dual phase extraction system at a non-Fund site. He recommended that miscellaneous income be budgeted at \$1,000 for fiscal year 2015.

Mr. Leasor pointed out that the actual total operating income exceeded the fiscal year 2014 budgeted amount by \$133,000.

Mr. Leasor said the claims expense budgeted in fiscal year 2014 was \$9 million; however, actual claims expense is anticipated to be approximately \$7.1 million. He stated the proposed budget for the fiscal year 2015 claims expense is \$9 million.

Mr. Leasor said the salary line item expense was \$115,000 below the amount budgeted for fiscal year 2014. He said this was due to a position vacancy for part of the year and health care expenses being lower than anticipated. He recommended the 2015 budget for salaries be set at \$1,252,200. He noted this was the amount approved by the legislature through the biennial budget process. He said this amount reflects all positions being filled, the addition of a fifth claims analyst position and the replacement of the claims coordinator with a junior claims analyst.

Mr. Leasor said the amounts requested for advertising, staff development and training, telephone and postage for fiscal year 2015 were carried over from fiscal year 2014 with no changes.

Mr. Leasor reported that temporary services actual expenses were below the budgeted amount by approximately \$6,600. He recommended the 2015 budget for temporary services be increased to \$25,000. He said the recommended increase is due to the use of a temporary service employee to fill the claims coordinator vacancy in the claims department. He said it is anticipated the individual will be appointed by the early fall to fill the junior claims analyst position.

Mr. Leasor said the anticipated rent expense for fiscal year 2015 is \$108,500. He noted that the Board is currently in a two-year lease agreement ending June 30, 2015.

Mr. Leasor reported that the office supplies actual expenses were \$5,700 above the budgeted amount due to costs incurred to purchase new phones for the transition to a voice over internet protocol (VoIP) phone system and to update Microsoft Office software. He said the amount requested for fiscal year 2015 is \$19,000. He said this amount includes monies for the purchase of new chairs for the Board room, other office supplies and any pre-packaged software with a cost of under \$500.

Mr. Leasor reported the printing and copying expenses for fiscal year 2014 were \$2,700 below the budgeted amount. He said the recommended budget for fiscal year 2015 is \$15,000.

Mr. Leasor said legal and professional actual expenses were below the budgeted amount by \$114,000. He said this was due to costs for the collection of delinquent accounts being lower than

anticipated in addition to costs budgeted but not incurred for other professional services. He said the amount requested for legal and professional expenses for fiscal year 2015 is \$270,000. He explained that this expense includes the cost for the services of the Assistant Attorney General, a hearing officer, a business analyst to review claim costs and processes, and experts to provide legal testimony as needed; the annual audit; Attorney General and Special Counsel fees related to the collection of delinquent accounts; and other miscellaneous and professional services.

Mr. Leasor noted that the legal and professional line item does not include costs for a database maintenance/developer contract. Chairman Rocco said there are discussions evaluating whether to maintain the aging STARRS (Statistical Tank and Reimbursement Records System) database, which is based on SQL Server 2000 technology, or whether it would be more beneficial to update the database to the newest technology. He said the costs to migrate the database to the new technology could be substantial, and the Board will need to revisit this line item at a future Board meeting once the estimated costs to update the database are known.

Mr. Leasor reported that traveling expenses were \$4,500 above the amount budgeted due to the travel required for the ongoing subrogation litigation against major oil companies. He said that the recommended budget travel expense for fiscal year 2015 is \$10,000.

Mr. Leasor stated employee expenses were \$1,300 below the budgeted amount due to a staff vacancy. He said the anticipated expenses for fiscal year 2015 are \$24,000. He explained the increase from the prior year's expense is due to an increase in the monthly rate for employee parking.

Mr. Leasor said telephone expenses were \$400 above the budgeted amount due to the transition to the VoIP system and the costs incurred to maintain both the VoIP and traditional landline phone services for one month. He said the anticipated telephone expenses for fiscal year 2015 are \$11,000. He explained that this expense includes web access, website hosting, spam/virus filtering, VoIP phone system, 1-800 number and off-site hosting of the backup hardware.

Mr. Leasor said depreciation expense was below the amount budgeted by \$4,900 due to not making all of the anticipated purchases as well as the timing of certain purchases. He said the anticipated depreciation expense for fiscal year 2015 is \$28,400.

Mr. Leasor pointed out that overall, operating expenses were approximately \$245,000 below what was budgeted for fiscal year 2014. He stated the recommended fiscal year 2015 operating expense budget total is \$1,797,100. He noted this is a \$9,100 increase from the 2014 operating expense budget.

Chairman Rocco asked if there were any comments or questions regarding the recommended proposed Operating Budget, and there were none. He requested a motion to approve the proposed fiscal year 2015 operating budget. Mayor Kuchta so moved. Ms. Hilvert seconded. A vote was taken and all members voted in favor. The motion passed.

Chairman Rocco requested a motion to obligate \$9 million for the payment of claims for fiscal year 2015. Vice-Chairman Hull so moved. Ms. Hilvert seconded. A vote was taken and all members voted in favor. The motion passed.

Capital Budget

Chairman Rocco called upon Mr. Leasor to present the proposed capital budget for fiscal year 2015.

Mr. Leasor said the proposed capital budget includes the fiscal year 2013 actual expenditures, the budgeted amounts and annualized expenditures for fiscal year 2014, and the recommended budget for fiscal year 2015.

Mr. Leasor said furniture and equipment was budgeted at \$15,000 for fiscal year 2014, and the expenditure for this line item was \$10,700. He said the recommended furniture and equipment budget for fiscal year 2015 is \$15,000. He noted the monies in the budget are for the replacement of office furniture for the claims section.

Mr. Leasor reported that data processing and electronics were budgeted at \$12,000 for fiscal year 2014, and the actual expenditures for this line item were \$10,000. He said these expenditures included the purchase of a Power Over Ethernet switch, which was required for the transition to the VoIP phone system, a check scanning device, a laptop and two replacement computers. He said \$12,000 is recommended for data processing and electronics for fiscal year 2015. He noted the requested amount includes costs for the purchase of pre-packaged software with a cost above \$500 as well as replacement IT related equipment and computers as needed.

Mr. Leasor said the legacy system is a carryover item from fiscal year 2014, and the amount requested for fiscal year 2015 is \$10,000. He explained that the money is needed for the migration of the stored data from the Board's old DOS based legacy database system known as Rbase to a database using a graphical user interface and designed for multiple users. He said the data is used for historical purposes, but there are compatibility issues with the legacy system and the Windows 7 operating system.

Mr. Leasor said the database out-of-scope updates for the STARRS database were budgeted at \$25,000 for fiscal year 2014. However, there were no expenditures for this line item. He said no out-of-scope and database update costs were included in the fiscal year 2015 budget. He noted additional capital funds may be needed depending upon whether the Board decides to migrate STARRS to a newer database technology.

Chairman Rocco questioned if both the legacy system and STARRS database could be migrated simultaneously into one new database. Director Richmond noted that the information in the legacy system includes 1986 tank registration information obtained from BUSTR, and there are no identifying values that would allow it to tie into the information currently maintained in the STARRS database.

Mr. Leasor reported that the fiscal year 2014 total capital budget was set at \$62,000 and actual expenditures were approximately \$20,800. Mr. Leasor recommended a total fiscal year 2015 capital budget of \$37,000.

Chairman Rocco asked if there were any questions regarding the proposed capital budget, and there were none. Vice-Chairman Hull moved to approve the proposed fiscal year 2015 capital budget. Mr. Geyer seconded. A vote was taken and all members voted in favor. The motion passed.

Fee Statement Statistics

Mr. Leasor stated the 2014 program year fee statements were issued on April 28, 2014, and approximately \$11.8 million was invoiced to 3,443 owners of 21,392 USTs.

Mr. Leasor said, as of June 13, 2014, approximately \$4.4 million, which represents 37% of the amount billed, had been collected in per-tank fees. He said collections for the same period last year were \$5.2 million. He noted the amount of per-tank fees collected in comparison to last year is lower due to the \$100 reduction in the per-tank fee.

Mr. Leasor said between July 1, 2013 and June 13, 2014, approximately \$13.7 million was collected for program year 2013 fees and \$339,000, net of any refunds paid, was collected for prior years' fees.

Mr. Leasor said for program year 2014, 15,900 tanks were billed at the standard deductible (\$55,000) per-tank fee and about 5,500 tanks were billed at the reduced deductible (\$11,000) per-tank fee. Mr. Leasor said, as of June 13, 2014, the number of tanks paid at the standard deductible rate is a little over 5,400 and more than 2,400 tanks were paid at the reduced deductible rate. He said fees for a total of 7,874 tanks have been paid by 1,456 owners. He said this compares to fees being paid for 7,887 tanks by 1,423 owners for the same period of time in the prior year.

Mr. Leasor said for the 2013 program year, 3,280 owners have paid for 20,754 tanks. He indicated this amount would increase slightly by the end of the program year, June 30, 2014.

Mr. Leasor said the \$4.4 million collected to date represents 37% of the \$11.9 million budgeted for program year 2014. He said so far for program year 2014, fees for 7,874 tanks have been paid, which represents 38% of the fees for the 20,600 tanks budgeted for the program year.

Auditor Selection and Contract

Mr. Leasor thanked Mr. Geyer for his assistance in the auditor selection process, and briefly discussed the process the Auditor of State uses to request proposals for audit services.

Mr. Leasor reported that three public accounting firms responded to the Board's request for proposal to provide auditing services for the next five-year audit cycle and submitted proposals to the Auditor of State. He said one firm was immediately disqualified by the Auditor of State due to the submission of a form required by the Auditor of State that had been altered.

Mr. Leasor said the remaining two proposals from the firms Clark Shaefer Hackett and Kennedy Cottrell Richards were forwarded for review. He said of the possible 100 total points used by the Auditor of State's office to select the audit firm, the Board was allotted five client preference points and the Auditor of State's office awarded the remaining 95 points. The Auditor of State's points are awarded to the firms based on cost and historical experience with the firms' prior audit submissions, including report quality, reporting timeliness and previous auditing experience. He reported the winning proposal was submitted by Kennedy Cottrell Richards. Mr. Leasor stated the cost for the next five-year audit cycle is \$199,465.

Mr. Hightower asked for the amount of the second bid. Mr. Leasor said Clark Shaefer Hackett submitted a bid of \$237,500.

Chairman Rocco asked if there were any additional questions or discussion concerning the audit contract, and there were none. Chairman Rocco requested a motion to authorize the Chairman on behalf of the Board to enter into and sign a five-year agreement in an amount not to exceed \$199,700 with Kennedy Cottrell Richards for auditing services for fiscal years 2014 through 2018. Vice-Chairman Hull so moved. Mayor Kuchta seconded. A vote was taken and all members voted in the affirmative. The motion carried.

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, as of June 13, 2014, \$186,650 was paid in refunds and a total of \$90,050 was used this program year to offset prior years' outstanding fees. She said the combined amounts totaled \$276,700, which represents 111% of the refund goal of \$250,000 that was set for the 2013 program year.

Ms. Esquivel said there were 2,969 refunds pending, which total \$1,392,748. Chairman Rocco asked for clarification whether the pending refund total included refunds that were issued but the checks were not cashed. Ms. Esquivel explained that the total did not include refunds that were unclaimed.

Ms. Esquivel said that after deducting the collection costs, a total of \$210,377 had been collected by the Attorney General's Office and Special Counsel so far this program year.

Ms. Esquivel stated that, as of June 13, 2014, 272 accounts totaling \$1,154,822 had been certified to the Attorney General's Office for collection. She said the next certification of fees would occur in the fall of 2014.

Ms. Esquivel said five Orders Pursuant to Law and two Determinations to Deny a Certificate of Coverage were under appeal. She said that all appeals were under review.

Ms. Esquivel said that three Ability to Pay Applications were 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 the 2014 program year Annual Fee Assessment Statements were mailed to 3,439 owners on April 28, 2014. She said 38 fewer fee statements were mailed in comparison to the 2013 program year.

Ms. Esquivel stated that 3,196 Certificates of Coverage had been issued for program year 2013. She said there are 74 Applications for Certificates of Coverage currently in process.

She said there are 7 unresolved Pending Denials and 95 unresolved Determinations to Deny a Certificate of Coverage.

Ms. Esquivel stated that there are 56 uncashed refund checks that total \$38,845. She said there is \$59,295 in refunds pending for 54 owners from whom more information has been requested.

Claims Report:

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

Ms. Duann reported that, as of June 2, 2014, 1,766 claims were pending review, which was a decrease of 10 claims from the Board's March meeting. She said a total of 28 claim settlement determinations were under appeal. She said several appeal responses were being prepared.

Ms. Duann reported that, as of June 2, 2014, the total maximum liability of in-house open claims is \$30.4 million. She said using the historical average claim payout ratio of 70-75%, the anticipated claim liability of unpaid in-house claims is about \$22 million.

Ms. Duann said that in the last three months, 242 claims were received and 254 claims were settled. She said that so far in the month of June, only 20 claims had been received, and 45 claims were settled for a total of about \$463,000. She noted that typically many more claims are received in the last week of each month.

Ms. Duann said the total amount projected to be offered for claim settlements for the 2013 program year is approximately \$7 million.

Ms. Duann reported that no eligibility applications were received in May or the first half of June. She said during this time 10 eligibility determinations were issued. She noted since the beginning of the program year, July 1, 2013, 44 eligibility applications were received, and 72 eligibility determinations were issued with an approval ratio of 90%. She said that, as of June 2, 2014, seven eligibility applications were pending review and three eligibility determinations were under appeal.

Ms. Duann said for the 2013 program year, a total of 155 requests for cost pre-approval were received, and 173 cost pre-approval notifications were issued. She said currently only 32 cost pre-approval requests are pending review.

Rule Committee Report

Chairman Rocco called upon Executive Director Starr Richmond to present the final version of the proposed rule changes in accordance with the mandatory five-year rule review process. Ms. Richmond stated that the Rules Committee had met on several occasions over the past few months to review all of the Board's rules. The following summarizes the proposed rule changes:

No change rules:

After reviewing the following rules, the committee proposed no changes: 3737-1-01, 3737-1-04.1, 3737-1-05, 3737-1-06, 3737-1-07, 3737-1-10, 3737-1-11, 3737-1-13 and 3737-1-15.

Minor change rules:

The committee recommended minor amendments to eight of the Board's rules. The recommended changes included grammar corrections, and text edits to provide additional clarification and make the rules easier to read and understand. Additional amendments were necessary in order to maintain consistency as a result of other rule changes. The following rules included minor changes: 3737-1-02, 3737-1-08, 3737-1-12, 3737-1-12.1, 3737-1-17, 3737-1-18, 3737-1-19 and 3737-1-20.

Substantial change rules:

The committee proposed substantial changes to the remaining rules and proposed four new rules. The following is a brief summary of the changes recommended by the committee:

3737-1-03, Definitions:

The committee proposed that the definition of “fee” be updated to include late payment fees and costs for the collection of delinquent accounts, and the definition of “subrogation” be moved from rule 3737-1-22 to this rule. The definitions of “indemnify” and “unclaimed monies trust account” were also added to the rule.

3737-1-04, Annual petroleum underground storage tank financial assurance fee, certification of compliance, and financial responsibility:

The committee proposed to amend the rule so that when ownership of an underground storage tank has transferred and outstanding fees exist at the time of transfer, the new responsible person seeking a certificate of coverage with the Fund may elect to either pay all fees outstanding at the time of the transfer or conduct a baseline environmental site assessment (see rule 3737-1-04.2) to establish the concentrations of chemicals of concern existing in the soil and groundwater at the underground storage tank site at the time of the transfer. This election is set forth in paragraph (F)(2)(b) of the rule.

No other significant changes to the rule were proposed. However, the text of the existing rule was reorganized with the intent of making the rule easier to read and understand. This reorganization of the text resulted in a substantial amount of the text being stricken and re-entered as new text. Therefore, the committee proposed rescinding the existing rule and replacing it with a new rule in accordance with the guidelines established by the Legislative Service Commission.

3737-1-04.2, Baseline environmental site assessment:

Pursuant to the proposed new rule 3737-1-04, the committee proposed to adopt this new rule to set the minimum requirements for a baseline environmental site assessment to establish the concentrations of chemicals of concern existing in the soil and groundwater at an underground storage tank site at the time ownership of the underground storage tanks transfer. The new responsible person may choose to perform this site assessment as an alternative to remitting any fees that are outstanding for the underground storage tank(s) at the time of the transfer. The rule was written to be consistent with the closure assessment activities set forth by the fire marshal in paragraph (I) of rule 1301:7-9-12. It provides that the results of a Phase II Environmental Site Assessment completed within six months of the date of the transfer of an underground storage tank system may be used to complete the environmental site assessment summary report.

3737-1-09, Limitations of fund coverage:

The committee proposed to amend the rule to clarify that only those costs necessary for performing corrective action authorized by the fire marshal’s rules for which pre-approval of the pending costs was not sought when required are subject to a 50% reduction in the reimbursable amount. Further, costs for performing corrective actions that are not authorized by the fire marshal’s rules are not reimbursable. In addition, language regarding non-reimbursable markup costs previously included in rule 3737-1-09.1 and language previously located in rule 3737-1-22 regarding the reduction in the reimbursable amount when the responsible person fails to comply with the Board’s subrogation rule were moved to this rule.

3737-1-09.1, Inclusions of fund coverage:

The committee proposed to remove language dealing with non-reimbursable markup costs as these costs are more appropriately listed as non-reimbursable costs under the proposed rule 3737-1-09.

3737-1-16, Third-party claims:

The committee proposed an amendment to clarify that the Board maintains the right to participate or intervene in any pending negotiations, litigation, mediations or settlement discussions with the third party.

3737-1-21, Obligated account:

The committee proposed a change to the rule to clarify that monies placed in the unclaimed monies trust account do not remain in the unobligated balance.

3737-1-22, Subrogation:

The committee proposed to change the existing rule by moving the definition of “subrogation” in paragraph (D) to rule 3737-1-03, which is the definition rule. Further, the non-reimbursable costs set forth in paragraph (E) are proposed to be re-located to rule 3737-1-09, which includes other limitations of Fund coverage. No other significant changes were proposed. However, the text of the existing rule was further reorganized with the intent of making the rule easier to read and understand. For instance, the committee proposes moving the thirty-day notice requirement to paragraph (A)(1) so affected persons might more quickly identify the deadline for reporting the action to the Board. Therefore, the committee proposed rescinding the existing rule and replacing it with a new rule in accordance with the guidelines established by the Legislative Service Commission.

3737-1-23, Access and maintenance of confidential personal information:

The proposed rule is being filed as a result of the passage of Substitute House Bill 648 (127th General Assembly), which amended sections 1347.15, 1347.99 and 5703.211 of the Revised Code to require agencies, boards and commissions to develop administrative rules and related policies on accessing confidential personal information. The rule defines confidential personal information and related topics, and sets forth agency policies related to accessing, logging and storing confidential personal information. It provides requirements that must be observed by employees in addition to processes and procedures regarding the maintenance and access of confidential personal information.

Chairman Rocco asked if there were any questions or discussion concerning the rule actions proposed by the Rules Committee, and there was none.

Chairman Rocco requested a motion to file rules 3737-1-01, 3737-1-04.1, 3737-1-05, 3737-1-06, 3737-1-07, 3737-1-10, 3737-1-11, 3737-1-13 and 3737-1-15 as five-year review no-change rules with the Joint Committee on Agency Rule Review (JCARR), Legislative Service Commission (LSC) and the Secretary of State. Mayor Kuchta so moved. Mr. Stephenson seconded. A vote was taken and all members were in favor. The motion passed.

Chairman Rocco requested a motion to accept the changes proposed by the Rules Committee to rules 3737-1-02, 3737-1-03, 3737-1-08, 3737-1-09, 3737-1-09.1, 3737-1-12, 3737-1-12.1, 3737-1-16, 3737-1-17, 3737-1-18, 3737-1-19, 3737-1-20 and 3737-1-21, and to file the proposed

amended rules with JCARR, LSC and the Secretary of State. Vice-Chairman Hull so moved. Mr. Geyer seconded. A vote was taken and all members were in favor. The motion passed.

Chairman Rocco requested a motion to file the rescission of rules 3737-1-04 and 3737-1-22 with JCARR, LSC and the Secretary of State. Mr. Hightower so moved. Mr. Stephenson seconded. A vote was taken and all members were in favor. The motion passed.

Chairman Rocco requested a motion to accept the new rules 3737-1-04, 3737-1-04.2, 3737-1-22 and 3737-1-23 as proposed by the Rules Committee and to file the proposed new rules with JCARR, LSC and the Secretary of State. Mayor Kuchta so moved. Vice-Chairman Hull seconded. A vote was taken and all members were in favor. The motion passed.

Chairman Rocco asked Ms. Richmond to provide an overview of the remaining steps in the rulemaking process. Ms. Richmond explained that certain rules would be submitted to the Common Sense Initiative (CSI) Office for their review and public comment. She said that after the close of the CSI comment period, the CSI Office would issue its recommendation and an agency response would be submitted. She noted that depending upon the recommendation of the CSI Office, the rules would then be filed with JCARR, LSC and the Secretary of State. She said following the public hearing and JCARR hearing, the rules would be final filed with an anticipated effective date of January 1, 2015.

Rules Committee chair Mayor Kuchta thanked the committee members and agency staff for their hard work during the rule review. He said the review is a tedious process and a tremendous amount of time and work goes into the review.

New Business:

Hearing Officer's Contract Renewal

Chairman Rocco called upon Ms. Richmond to discuss the contract for the Board's hearing officer, Howard Silver. Ms. Richmond said the contract with Mr. Silver would expire on June 30, 2014, and Mr. Silver has agreed to extend his contract at the same hourly rate of \$110. She said the terms of the existing contract include a minimum of five hours and a maximum of 300 hours for the contract period, and also includes a maximum payment of \$1,800 per appeal. Ms. Richmond recommended revising the contract to eliminate the maximum number of hours since this language was likely a remnant from when the Board utilized two hearing officers. She also recommended increasing the maximum payment per appeal from \$1,800 to \$2,500. She explained that the appeals heard by Mr. Silver are typically very complex cases which require a significant amount of time to review and prepare the report and recommendation. As a result, Mr. Silver has often had to submit requests for payment beyond the \$1,800 amount. She said the Attorney General's Office also requested that the contract be updated to require Mr. Silver to advise the Board whether or not he is a retiree of OPERS (Ohio Public Employees Retirement System).

Vice-Chairman Hull made a motion to modify the existing contract with Howard Silver, to remove the maximum number of hours, to increase the maximum payment amount from \$1,800 per appeal to \$2,500, and to add the OPERS language as recommended by the Attorney General's Office. Mayor Kuchta seconded.

Chairman Rocco asked if there was any discussion concerning the contract. Vice-Chairman Hull said that Mr. Silver has done a phenomenal job as the Board's hearing officer, and he considers him to be the best judge of the time necessary to review the evidence and arguments and prepare the report and recommendation. He said the maximum payment limitations of the existing contract should be removed. Chairman Rocco concurred, and noted that Mr. Silver is as efficient as any hearing officer when reviewing an appeal and preparing his report. Ms. Richmond noted that Mr. Silver's hourly rate has not changed since 2002. Chairman Rocco asked if there was any further discussion, and there was none. A vote was taken and all members were in favor. The motion passed.

Chairman Rocco requested a motion to negotiate and enter into an agreement with Howard Silver for the continuation of hearing officer services for the period of July 1, 2014 through June 30, 2015. Vice-Chairman Hull so moved. Mayor Kuchta Seconded. A vote was taken and all members were in favor. The motion passed.

Assistant Attorney General's Contract Renewal

Chairman Rocco called upon Ms. Richmond to discuss the contract for legal services with the Attorney General's Office. Ms. Richmond said the current Memorandum of Understanding (MOU) between the Board and the Attorney General would expire on June 30, 2014. She said the terms of the proposed MOU are for legal services to be provided by Carla Dowling-Fitzpatrick for one year beginning July 1, 2014 and ending June 30, 2015. The MOU assumes that Ms. Dowling-Fitzpatrick will use 50% of her work hours for Board-related matters, and therefore, the Board will pay 50% of her salary and benefit costs plus additional indirect costs for expenses related to telephone services, office supplies, postage, etc. She noted the agreement includes a clause that if the direct and indirect costs exceed \$62,265, the parties must further negotiate, and any adjustments to this amount would be incorporated into a written amendment to the MOU. She noted the \$62,265 amount was a slight increase over the existing MOU.

Ms. Richmond requested a motion to authorize the Chairman to enter into an agreement with the Attorney General's Office for the continuation of legal services in an amount not to exceed \$62,265 for the period of July 1, 2014 through June 30, 2015. Vice-Chairman Hull so moved. Mayor Kuchta seconded.

Chairman Rocco asked if there were any questions or discussion concerning the agreement, and there was none. A vote was taken and all members were in favor. The motion passed.

Hardship Applications

Chairman Rocco called upon Starr Richmond, Executive Director, to present the hardship applications.

Ms. Richmond stated that the Board's rule 3737-1-08 provides for an owner experiencing financial hardship to apply for hardship status with the Fund. She said granting hardship status allows for the acceleration of the review of the claims submitted by the owner. Ms. Richmond noted that granting hardship status does not increase the amount of reimbursement to the tank owner. She stated by accelerating the review of the claim, it reduces the financial burden the owner would experience if the claims were reviewed and settled in the normal course of business. She said, once granted, the hardship status remains in effect for a one-year period and at that time, the owner may reapply for hardship status.

Ms. Richmond stated that in determining hardship status, the application and a minimum of two years of income tax records are reviewed. She said, in addition, a U.S. Environmental Protection Agency (EPA) financial capacity test is used to evaluate the owner's cash flow and determine if the owner is able to carry debt, in which case, the owner could finance the costs of corrective actions over time.

Claim # 11387-0001/05/16/91, Owner – Washington & Lee Service Inc.

Ms. Richmond said Washington and Lee Service Inc. is the responsible person for a 1990 release that occurred at 2080 Lee Road in Cleveland Heights, Ohio. She noted that Washington and Lee Service Inc. was dissolved in 2007. However, since that time David Saginor, one of the original incorporators, has continued the corrective actions at the site and requested the Board grant hardship status to him. She said this was his first request for hardship status.

Ms. Richmond said that to date, the Fund has reimbursed \$486,700 for corrective action costs for this release and there were no unsettled claims in house. She noted the tanks were removed in June of 1991 and the property was sold in October 2006. She said Mr. Saginor provided the financing for the new owner and the new owner makes monthly payments, which total \$24,000 annually. She said the estimated cost of corrective actions for the next year is \$25,000.

She said that Mr. Saginor's adjusted gross income for the past two years has been less than \$55,000, and based on the EPA financial capacity test, he does not have adequate cash flow to pay for the corrective action costs. She noted that he can afford additional debt payments of about \$13,000 over a three-year period, but this is insufficient to pay for even the next year's corrective action costs.

Ms. Richmond recommended the Board approve the application and grant hardship status to Mr. Saginor. Mayor Kuchta so moved and Ms. Hilvert seconded. A vote was taken and all members voted in the affirmative. The motion carried.

Claim # 11924-0001/10/26/95, Owner – Herbert Adams d/b/a Adams Marathon

Ms. Richmond said that Herbert Adams is the responsible person for a 1995 release at 409 Church Street in Bradner, Ohio. She said this is his first request for hardship status.

Ms. Richmond said to date, the Fund has reimbursed \$276,700 for corrective actions cost for this release, and there are three open claims totaling \$46,800 in-house. She noted that two of these three claims are under appeal. She said the first-year costs totaling \$112,600 had been preapproved for the installation and operation of a dual phase extraction system for which the Fund previously reimbursed the costs.

Ms. Richmond said Mr. Adams continues to own the property and rents it to another party for an auto repair business. She noted that all underground tanks have been removed. She said Mr. Adams works as a millwright and his wife is a postal carrier.

Ms. Richmond said that based on the EPA financial capacity test, Mr. Adams can afford maximum additional debt payments of \$44,000 over a three-year period. However, when compared to the first-year cost of \$112,600, the \$44,000 is not sufficient. She said granting hardship status would allow him to acquire short term financing that if needed, could be re-accessed for future corrective action costs.

Ms. Richmond recommended the Board approve the application and grant hardship status to Mr. Adams. Vice-Chairman Hull so moved and Mr. Geyer seconded. A vote was taken and all members voted in the affirmative. The motion carried.

Claim # 13755-0001/05/24/91, Owner – Raymond Cooper d/b/a Cooper Marathon

Ms. Richmond said that Raymond Cooper is the responsible person for a release that occurred in 1991 at 111 East Main Street in Lucas, Ohio. She said this is his 10th request for hardship status.

Ms. Richmond said to date, the Fund has reimbursed \$315,000 for corrective action costs for this release. She said there is one unsettled claim totaling \$5,600 in house. In addition, costs totaling \$54,500 have been preapproved for a pump and treat system to be operated at the site for a period of three months.

Ms. Richmond said that Mr. Cooper is retired and no longer owns the property. She said based on the information he provided in the hardship application, his household income is from pension and social security benefits. She noted that both he and his wife retired early due to serious health issues.

Ms. Richmond said based on the EPA financial capacity test for retirees, Mr. Cooper lacks the resources to cover future living expenses and his ability to afford the \$54,500 which has been preapproved is highly unlikely.

Ms. Richmond recommended the Board approve the application and grant hardship status to Mr. Cooper. Vice-Chairman Hull so moved and Mayor Kuchta seconded. A vote was taken and all members voted in the affirmative. The motion carried.

Claim # 16065-0001/03/26/96, Owner – Lois Jeffers d/b/a Midway Petroleum

Ms. Richmond said that Lois Jeffers is the responsible person for a 1995 release at 89 South Main Street in Fredericktown, Ohio. She said the site was sold in March 2007, but Mrs. Jeffers has continued the corrective actions at the site. This is the fourth request for hardship status.

Ms. Richmond said to date, the Fund has reimbursed \$180,000 for corrective actions at this site, and there are no unsettled claims currently in house.

Ms. Richmond said that Mrs. Jeffers is retired and based upon the application, her only source of income is her pension and social security, which is approximately \$23,000 annually. She said this slightly exceeds her reported household living expenses. She said Mrs. Jeffers' only assets are her individual retirement accounts with a combined value of approximately \$12,000.

In addition to the review of the hardship application, the EPA financial capacity test was used to evaluate Mrs. Jeffers' cash flow and determine whether she has the ability to carry additional debt to finance the costs of corrective actions. Ms. Richmond said that based on the EPA financial capacity test, it is highly unlikely that Mrs. Jeffers would have the ability afford any corrective action costs.

Ms. Richmond recommended the Board approve the application and grant hardship status to Mrs. Jeffers. Mayor Kuchta so moved and Mr. Hightower seconded. A vote was taken and all members voted in the affirmative. The motion carried.

Claim # 16697-0001/05/28/93, Owner – Estate of Shirley Cira d/b/a Cory Rawson Cafe

Ms. Richmond said Shirley Cira is the responsible party for a 1993 release at 5018 County Road 313 in Rawson, Ohio. She said that Mrs. Cira is now deceased and James Cira is a trustee for her estate. She said Mr. Cira submitted the hardship application on behalf of the estate, and it was the first request for hardship status.

Ms. Richmond said to date, the Fund has reimbursed \$60,150 for corrective actions costs for this release. She said there are three unsettled claims totaling \$27,000 in house that would be settled within 90 days if hardship is granted. She noted that the property was sold in December 1993, and Mrs. Cira and her estate have continued corrective actions at the site. She said the estate's only asset is \$44,000 in a checking account. Based on the application, anticipated corrective action costs for the next year total \$175,000.

Ms. Richmond said based on the EPA financial capacity test, the estate can afford less than \$5,000 over the next year and only \$1,500 in additional debt payments over a three-year period.

Ms. Richmond recommended the Board approve the application and grant hardship status to the Estate of Shirley Cira. Mr. Hightower so moved and Vice-Chairman Hull seconded. A vote was taken and all members voted in the affirmative. The motion carried.

Claim # 17992-0001/06/30/06, Owner – Glouster Car Care

Ms. Richmond said Glouster Car Care is the responsible person for a release discovered at 43 South High Street in Glouster, Ohio in June 2006 when the tanks were removed. She said the property was sold in February 2011, and Patsy Brownell, the owner of Glouster Car Care, has continued the corrective actions at the site. She said this is the first request for hardship status.

Ms. Richmond said to date, the Fund has reimbursed \$41,400 for corrective actions at this release site and six unsettled claims totaling \$52,600 are in house. She said based on the application, the anticipated corrective action costs for the next year are \$25,000.

Ms. Richmond said that Mrs. Brownell is retired and receives approximately \$44,000 annually through social security and a pension. This amount slightly exceeds her reported household living expenses.

Ms. Richmond said based on the EPA financial capacity test, Mrs. Brownell does not have adequate cash flow or the ability to carry additional debt in order to pay corrective action costs.

Ms. Richmond recommended the Board approve the application and grant hardship status to Mrs. Brownell. Mayor Kuchta so moved and Vice-Chairman Hull seconded. A vote was taken and all members voted in the affirmative. The motion carried.

Claim # 20240-0001/05/28/08, Owner – Amanda Carryout Inc.

Ms. Richmond said Allen Frank is the owner of Amanda Carryout Inc., and the carryout is the responsible person for a release that occurred in 2008 at 145 East Main Street in Amanda, Ohio. She said that as the owner, Mr. Frank is requesting hardship status for Amanda Carryout Inc., and this was his fifth request for hardship status.

Ms. Richmond said to date, the Fund has reimbursed slightly under \$132,000 for corrective actions at this release site, and there is one claim pending review for approximately \$10,300. She said in October 2013, costs for a remedial action plan in the amount of \$42,000 were pre-approved.

Ms. Richmond said based on the application, the ABEL model estimates a less than 50% probability that the carryout can afford \$42,000 of corrective action costs, and therefore, denying hardship status would pose a burden on the carryout as it does not have adequate cash flow to self-finance corrective action costs.

Ms. Richmond recommended the Board approve the application and grant hardship status to Amanda Carryout, Inc. Mayor Kuchta so moved and Vice-Chairman Hull seconded. A vote was taken and all members voted in the affirmative. The motion carried.

Certificates of Coverage – Ratifications:

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

Ms. Richmond said the lists behind Tabs 11, 12 and 13 are listings of facilities that, since the March Board meeting, had been issued or denied a program year 2012, 2013 or 2014 Certificate of Coverage.

Ms. Richmond 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.

Ms. Richmond explained that if deficiencies or compliance issues are identified, 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 if necessary, refers the owner to BUSTR to correct the registration record.

Ms. Richmond requested the Board ratify her actions with respect to the issuance of the 2012 program year Certificate of Coverage for the one facility included on the list behind Tab 11.

Mr. Geyer moved to ratify the issuance of the 2012 Certificate of Coverage for the facility listed. Vice-Chairman Hull seconded. A vote was taken and all of the members were in favor. The motion passed.

Ms. Richmond stated no 2012 program year Certificates of Coverage had been denied since the last meeting.

Ms. Richmond requested the Board ratify her actions with respect to the issuance of the 2013 program year Certificates of Coverage for the 74 owners of 218 facilities included on the list behind Tab 12.

Vice-Chairman Hull moved to ratify the issuance of the 2013 Certificates of Coverage for the facilities listed. Mr. Geyer seconded. A vote was taken and all of the members were in favor. The motion passed.

Ms. Richmond requested the Board ratify her actions with respect to the denial of the 2013 program year Certificates of Coverage for the 28 facilities included on the list behind the Tab 12 green divider page.

Mr. Geyer moved to ratify the denial of the 2013 Certificates of Coverage that were listed. Vice-Chairman Hull seconded. A vote was taken and all of the members were in favor. The motion passed.

Ms. Richmond requested the Board ratify her actions with respect to the issuance of the 2014 program year Certificates of Coverage for the 952 owners of 1,557 facilities included on the list behind Tab 13.

Vice-Chairman Hull moved to ratify the issuance of the 2014 Certificates of Coverage for the facilities listed. Mr. Stephenson seconded. A vote was taken and all of the members were in favor. The motion passed.

Executive Session:

Chairman Rocco requested a motion to enter into executive session with counsel pursuant to O.R.C. 121.22(G)(3) to discuss matters of pending or imminent court action. Vice-Chairman Hull so moved. Mr. Hightower seconded. Chairman Rocco called for a roll call. The following members voted in the affirmative: Ms. Hilvert and Messrs. Field, Geyer, Hightower, Hills, Hull, Kuchta, Stephenson and Rocco. There were no nays. The motion passed.

Prior to moving into executive session, Chairman Rocco requested to be recused from a portion of the executive session. Chairman Rocco turned the meeting over to Vice-Chairman Hull.

Reconvene Meeting

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

Vice-Chairman Hull moved to authorize the Attorney General's Office and Special Counsel to pursue litigation in a matter that has come before the Board regarding Ashland and the subrogation issue. Mayor Kuchta seconded. Chairman Rocco asked if there was any discussion, and there was none. A vote was taken and the following members voted in the affirmative: Ms. Hilvert and Messrs. Field, Geyer, Hills, Hull, Kuchta, Stephenson and Rocco. Mr. Hightower was not present for the vote. The motion passed.

Confirm Public Hearing and Next Meeting and Adjourn:

Chairman Rocco stated that there will be a public hearing concerning the proposed rule amendments on Wednesday, September 3, 2014, at 10:00 a.m. The next Board meeting will commence immediately following the public hearing.

Mayor Kuchta made a motion to adjourn the meeting and Vice-Chairman Hull seconded. All were in favor.