



Petroleum Underground Storage Tank Release Compensation Board

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MINUTES OF THE ONE HUNDRED NINETEENTH MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD

November 14, 2007

BOARD MEMBERS IN ATTENDANCE

Jim Rocco
John Hull
Duane Cable
Cheryl Hilvert
Nancy Kister
Tom Kmiec
Don Kuchta
Tom Stephenson

EX-OFFICIO MEMBERS IN ATTENDANCE

Lori Stevens, representing Kimberly A. Zurz, Director, Ohio Department of Commerce
Chris Geyer, representing Christopher Korleski, Director, Ohio Environmental Protection Agency
Chris Glaros, representing State Treasurer Richard Cordray

OTHERS IN ATTENDANCE

Dave Reeder	Acting Executive Director, PUSTRCB
Starr Richmond	Chief Fiscal Officer, PUSTRCB
Ellen Mitton	Administrative Coordinator, PUSTRCB
Cindy Duann	Environmental Claims Supervisor, PUSTRCB
Homayoun Sharifi	Environmental Claims Analyst, PUSTRCB
Jonathan Maneval	Compliance Coordinator, PUSTRCB
Khia Naylor	Assurability Analyst, PUSTRCB
Ernie Davis	Legislative Director, Dept. of Commerce
Cheryl Hawkinson	Assistant Attorney General
Sheryl Knapp	SFM, Testing & Registration
Andy Shrock	Parsons
Tim Wilfong	Speedway SuperAmerica
Doug Darrah	ATC Associates
Mike Shumaker	Speedway SuperAmerica
Jennifer Rhoads	OPMCA

Minutes submitted by:

Ellen S. Mitton
Administrative Coordinator

Call To Order:

Chairman Rocco convened the one hundred nineteenth meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, November 14, 2007 at 10:05 a.m. The following members were in attendance: Jim Rocco; John Hull; Nancy Kister; Tom Stephenson; Mayor Don Kuchta; Cheryl Hilvert; Tom Kmiec; Duane Cable; Lori Stevens, representing Director Kimberly Zurz, Ohio Department of Commerce; Chris Glaros, representing State Treasurer Richard Cordray; and, Chris Geyer, representing Director Chris Korleski, Ohio Environmental Protection Agency.

Chairman Rocco asked if there were any comments, questions, or discussions regarding the minutes from the September 12, 2007, board meeting and there were none. Mr. Hull moved to approve the minutes. Ms. Hilvert seconded the motion. A vote was taken and ten members were in favor. Mr. Glaros chose to abstain. The motion carried.

BUSTR Report:

Chairman Rocco called upon Ms. Lori Stevens, Acting Bureau Chief, BUSTR, to present the BUSTR report.

Ms. Stevens said that the Domenici-Barton Energy Policy Act of 2005 is Federal legislation signed into law on August 8, 2005. This Act amended federal laws governing the underground storage tank program and would place notable additional requirements on the state of Ohio. She said that due to this legislation, BUSTR had formed the BUSTR Rule Revision Advisory Committee (“committee”), consisting of UST owners and/or operators and other interested parties in Ohio. Ms. Stevens stated the committee had submitted proposed drafts of Ohio Administrative Code section 1301:7-9-06 and section 1301:7-9-07 to comply with recent changes in the federal law.

Ms. Stevens noted that the committee plans to have one more meeting in late December or early January. She said that date would be posted on the BUSTR website. She said that the agenda for the meeting would focus on secondary containment and delivery prohibition.

Ms. Stevens concluded her report stating that BUSTR is in the process of hiring three additional inspectors to assist in ongoing compliance inspections required by the Federal Energy Bill.

Financial Report:

Ms. Richmond began her report with an update on the ongoing audits. She said she received the release letter last week from the State Auditor and that the 2006 audit is now complete.

Ms. Richmond said that Schneider Downs completed the in-house fieldwork for the fiscal year 2007 audit last week. She stated that the auditors are awaiting the final actuarial report to finalize the audit. Ms. Richmond stated that it is her intent to mail the final audit draft to Board members by the end of December. She requested that each Board member review the 2007 audit and be prepared to discuss it at the January Board meeting. She said that Schneider Downs would be attending the January meeting to address any questions or concerns regarding the audit report. Ms. Richmond expects to have the 2007 audit released by the end of February.

Ms. Richmond indicated a copy of the actuarial report, completed by Pinnacle Actuarial Resources, had been distributed to each Board member today. She pointed out that the report refers to a claim as being a "release" or "site," and that in-house, we refer to a claim as those incremental costs that are received. She noted that the estimate of \$39.1 million is the remaining amount that the Board can expect to pay for the approved releases that had occurred by June 30, 2007. She stated that as of the end of June, the Board had paid \$171 million in settlement reimbursements. She stated that the \$39.1 million is broken into two components - \$37.9 million represents those claims and eligibility applications that were received and granted eligibility by June 30, 2007 and \$1.25 million represents those releases that occurred on or before June 30, 2007, but had not been reported or had not been granted eligibility. She stated that some of the information Pinnacle factored into their report were the 1998 performance upgrade standards, the changes in the way the costs are required to be submitted to the Board, the introduction of risk based correction action in 1999, as well as the changes that were made in 2005, and also the way in which the Board processes claims. Ms. Richmond said if there are any questions regarding this liability study to contact her.

Ms. Richmond stated that the August and September financials were mailed to each member. She said that the current unobligated balance is \$11.2 million. Ms. Richmond said there is an additional \$6.0 million remaining in the obligated account set aside for claim settlement payments, and another \$7.0 million in the debt service account.

Ms. Richmond stated that tank revenue at the end of September is just over \$14.3 million. She noted that the miscellaneous income line item is \$2,000, which is over budget; however, it represents reimbursement of travel expenses incurred in the last fiscal year. Reporting on other line items, Ms. Richmond noted that interest income is approximately \$390,000, which is about 35% of what was budgeted. She said the claims expense at the end of September was at \$2.1 million. The salary, rent, and office supplies line items are right on budget for this time in the year. She noted that temporary services and postage are extremely cyclical and are relatively high during this time of the year, but will even out during the fiscal year. Ms. Richmond said that the advertising cost is not a typical expense and was incurred as a result of the Executive Director posting in the newspaper. She stated that the Trustee Expense line item is a higher percentage of the budget right now because of the annual trustee fee of \$2,900 that occurred in August.

Ms. Richmond referenced the fee statement statistics spreadsheet and said that as of November 13, 2007, there had been approximately \$14.1 million in current year tank fees collected, and an additional \$400,000 in prior year fees collected. Ms. Richmond stated that the term "fees" represents the annual fees, penalties, and transfer fees. She said that the \$14.5 million represents 21,665 tanks and that 26% of those tanks were assured at the reduced deductible. Ms. Richmond said that the number of tank owners is increasing due to the transfer of sites from the larger tank owners to individual owners. She said that the Board is slightly below in collections compared to this time last year; however, Ms. Richmond expects to meet the \$15.1 million budget for the 2007 program year.

Claims Report:

Chairman Rocco called on Cindy Duann, Environmental Claims Supervisor, to present the claims report. She said the total maximum liability of in-house unpaid claims is approximately \$26.7 million, and based upon the historical payout of approximately 70%, the liability of unpaid claims is about \$18.7 million. She stated that claims had been submitted for 2,535 sites. Ms. Duann said that 1,612 sites (64%) had a no

further action (NFA) status and the average claims settlement payout per site is \$64,326. Ms. Duann noted that the average claim payout based on 95 sites that had received NFA status and had been cleaned up exclusively under BUSTR's 1999 and 2005 risk based corrective action rules is \$19,340 per site. She noted that only 46 of these sites had reached their deductible.

Ms. Duann stated that in the last four months, the Board received 296 claim packages and the staff settled or closed 294 claims. She said that the lower than typical average claim payout percentage of just under 55% is primarily due to a special settlement agreement with a tank owner that offered a very low percentage of payout.

Ms. Duann said that in October the Board received 14 eligibility applications, and so far this month, the Board received 15 eligibility applications. She said that this number is above normal; however, the staff would review all applications within a one-month time frame.

Ms. Duann said that the Board received 54 cost pre-approval applications in the past four months and determined 94 pre-approval applications, noting that the staff is gaining ground on the backlog of cost pre-approvals.

Following Ms. Duann's report, Chairman Rocco led a discussion regarding whether the transition or election to BUSTR's 2005 corrective action rule could have been avoided. The primary concern is that many of the sites had been under the 1992 corrective action rule, then moved to the 1999 rule for many years with expensive remediation costs reimbursed by the Fund. However, due to their failure to timely respond to BUSTR's Tier 2 deficiency requests or to follow up with a Tier 2 RAP, these sites are now transitioned to the 2005 rule and are re-doing all the Tier 1 and Tier 2 evaluations.

New Business

Finance Committee Report

Chairman Rocco called upon John Hull, Vice Chairman and member of the Finance Committee, to present the report of the Finance Committee meeting. Mr. Hull stated that the Board's Finance Committee, along with Starr Richmond, Chief Fiscal Officer, and Dave Reeder, Acting Executive Director, met in early November to discuss the financial status of the Fund. Based on their discussion, and evaluation of the projections and the solvency of the Fund, the Finance Committee recommended that the Board not increase tank fees or deductible amounts for program year 2008.

Hardship Application

Claim #18344-0001/10/26/98, Gary W. Glessner, Red Stripe Associates, Inc.

Mr. Reeder stated that Mr. Glessner had applied for his seventh hardship renewal. The first hardship renewal expired on September 12, 2001; the second on June 13, 2002; the third on February 12, 2003; the fourth on June 9, 2005; and the fifth hardship status expired on June 7, 2006. Mr. Glessner was denied hardship status on September 6, 2006. Mr. Reeder said that in addition to the review of the hardship renewal application, a US Environmental Protection Agency (EPA) financial capacity test was used to determine Mr. Glessner's ability to carry debt.

He said that the financial capacity test indicated that the cash flow situation at Red Stripe had declined since the 2006 application and that Mr. Glessner would not be able to carry the debt. Mr. Reeder recommended that the Board approve this application and grant hardship status. Mayor Kuchta moved to approve. Mr. Hull seconded and all were in favor.

Certificate of Coverage Ratification

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

Mr. Reeder explained that behind Tab 9 there are two lists of owners. The first is a listing of owners who had been issued a program year 2006 Certificate of Coverage; and, behind the green divider page, a listing of owners who had been denied a program year 2006 Certificate of Coverage. He said that behind Tab 10 there are also two lists of owners. The first is a listing of owners who had been issued a program year 2007 Certificate of Coverage; and, behind the green divider page, a listing of owners who had been denied a program year 2007 Certificate of Coverage.

Mr. Reeder said that the process used to review the fee applications and issue or deny a Certificate of Coverage included a review for completeness to determine that full payment had been made, that financial responsibility was demonstrated, and that the BUSTR registration was complete. In a second level of review, BUSTR registration data is considered to determine whether tanks for which coverage is sought are in compliance with BUSTR rules. Mr. Reeder said if there are no issues, the facility receives a Certificate of Coverage.

Mr. Reeder explained that if compliance issues are discovered, notice is provided to owners in accordance with Board rules and the Revised Code. Throughout this process the Board's staff works with owners to correct the fee statement record and/or the BUSTR registration record. Mr. Reeder stated that the staff often continues to work with owners even after a determination to deny a Certificate of Coverage has been issued. The Board's rules and the Revised Code make provisions for an appeal of the determinations issued within this process.

Mr. Reeder asked that the Board ratify his actions with respect to the facilities receiving 2006 Certificates of Coverage.

Mr. Hull moved to ratify the list of 2006 Certificates of Coverage that were granted. Mr. Cable seconded. Ten members voted in favor of the motion. Mr. Glaros was not present during the vote. The motion passed.

Mr. Reeder stated that all of the processes as stated in the Board's rules and the Revised Code were followed in making the determinations for denying Certificates of Coverage. Mr. Reeder asked that the Board ratify his actions with respect to the facilities that were denied a Certificate of Coverage in program year 2006.

Mr. Hull moved to ratify the list of 2006 Certificates of Coverage that were denied. Ms. Hilvert seconded. Ten members voted in favor of the motion. Mr. Glaros was not present during the vote. The motion passed.

Mr. Reeder asked that the Board ratify his actions with respect to the facilities receiving 2007 Certificates of Coverage.

Mr. Hull moved to ratify the list of 2007 Certificates of Coverage that were granted. Ms. Hilvert seconded. Ten members voted in favor of the motion. Mr. Glaros was not present during the vote. The motion passed.

Mr. Reeder asked that the Board ratify his actions with respect to the facilities that were denied a Certificate of Coverage in program year 2007.

Mr. Hull moved to ratify the list of 2007 Certificates of Coverage that were denied. Mr. Cable seconded. Ten members voted in favor of the motion. Mr. Glaros was not present during the vote. The motion passed.

Rules Committee Report

Chairman Rocco called upon Mr. Reeder to address the rule amendments discussed by the Rules Committee.

Mr. Reeder presented the recommendations proposed by the Rule Committee as follows:

3737-1-03

The proposed revision is to delete the definition of “confirmed release” and in its place, define the term “release” to mirror the existing Bureau of Underground Storage Tank Regulations’ definition.

3737-1-04

The proposed revision is to clarify the requirements for the issuance or transference of a facility Certificate of Coverage to a new owner as a result of a sale of tanks. In addition, clarification regarding the issuance of an Order Pursuant to Law, which assesses a late fee for the non-payment of the annual fees, is proposed.

3737-1-04.1

As a result of changes to rule 3737-1-03, the Board proposes to remove the reference to a confirmed release. The proposed rule will require that where a Certificate of Coverage has not been issued for a UST for two or more years, a responsible person certifies that prior to payment, no release or suspected release was required to have been reported to the State Fire Marshal.

3737-1-07

As a result of changes to rule 3737-1-03, this proposed revision is to remove the reference to a confirmed release and specify that an eligibility application must be filed within one-year from the date the release or suspected release was required to be reported to the State Fire Marshal.

3737-1-08

The proposed revision is to clarify that costs determined to be non-reimbursable shall not be applied toward a responsible person’s deductible or reduced deductible amount.

3737-1-09

The proposed revision is to clarify that when cost pre-approval is required but is not granted, costs are reimbursed at 50% of the usual, customary, and reasonable costs of the least expensive corrective action alternative.

3737-1-12

The proposed revision will remove a paragraph dealing with the maintenance of records. In addition, it clarifies certain corrective action program task completion dates as well as completion dates for tasks not specifically within defined program tasks. Completion dates are used to determine the one-year deadline for filing an application for cost reimbursement.

3737-1-12.1

The change clarifies when free product recovery (FPR) has been in place for one year, an evaluation assessing the effectiveness of the FPR technique be submitted within ninety days from the anniversary date and annually thereafter. In addition, when FPR is in conjunction with a remedial action plan (RAP), the FPR evaluation shall be included in the annual RAP evaluation submission.

3737-1-22

The proposed revision is to clarify that a responsible person must provide written notification to the Board within 30 days of any action by another party that caused and/or contributed to an accidental release. In addition, where an eligibility application was previously submitted to or approved by the Director and previous notification has not been provided, written notification is required within 90 days from the effective date of the rule. Failure to comply with any portion of this rule will result in a reduction of 50% of corrective action costs or third-party claim costs.

Chairman Rocco asked for a motion to adopt the recommendation of the Rules Committee to amend as proposed rules 3737-1-03, 3737-1-04, 3737-1-04.1, 3737-1-07, 3737-1-08, 3737-1-09, 3737-1-12, 3737-1-12.1, and 3737-1-22. Ms. Kister so moved. Mr. Hull seconded and a vote followed. All were in favor.

Mr. Reeder explained that the rules would be filed the week of December 4, 2007. A public hearing would be held prior to the Board meeting on January 9, 2008, and a hearing by the Joint Committee on Agency Rule Review would follow. The rules would be ready for adoption by the Board at the March 12, 2008, meeting and have an effective date of April 1, 2008.

Executive Session

Chairman Rocco requested a motion to go into executive session pursuant to R.C. 121.22(G)(3) to discuss matters of pending or imminent court action.

Mr. Hull so moved. Ms. Kister seconded and a roll call vote followed. The following members voted in the affirmative: Messrs. Rocco, Hull, Cable, Kmiec, Kuchta, Stephenson, Geyer, Glaros, and Mss. Hilvert, Stevens, and Kister. There were no nays and the motion passed.

Reconvene Meeting

The Board adjourned from executive session and Chairman Rocco reconvened the public meeting at approximately 12:55 p.m.

Mr. Stephenson moved to authorize the Chairman or Vice Chairman to authorize Cheryl Hawkinson, Assistant Attorney General, to participate in lawsuits to be brought about by BUSTR. Mr. Kmiec seconded and a vote was taken. All were in favor and the motion passed.

Executive Session

Chairman Rocco requested a motion to go into executive session pursuant to R.C. 121.22(G)(1), to discuss personnel compensation related issues.

Mr. Hull so moved. Mr. Stephenson seconded and a roll call vote followed. The following members voted in the affirmative: Messrs. Rocco, Hull, Cable, Kmiec, Kuchta, Stephenson, Geyer, Glaros, and Mss. Hilvert, Stevens, and Kister. There were no nays and the motion passed.

Reconvene Meeting

The Board adjourned from executive session and Chairman Rocco reconvened the public meeting at approximately 12:55 p.m.

Mr. Stephenson moved to offer the position of Executive Director to Ms. Starr Richmond at an annual salary of \$82,000, subject to a background check. Mr. Cable seconded and a roll call vote followed. The following members voted in the affirmative: Messrs. Rocco, Hull, Cable, Kmiec, Kuchta, Stephenson, Geyer, Glaros, and Mss. Hilvert, Stevens, and Kister. There were no nays and the motion passed.

Chairman Rocco noted that a start date had not been determined. Mr. Stephenson moved to make the start date effective immediately. Mr. Hull seconded and a roll call vote followed. The following members voted in the affirmative: Messrs. Rocco, Hull, Cable, Kmiec, Kuchta, Stephenson, Geyer, Glaros, and Mss. Hilvert, Stevens, and Kister. There were no nays and the motion passed. Ms. Richmond accepted the position.

Following a discussion regarding the search for a replacement for Ms. Richmond in her capacity as the Chief Fiscal Officer (CFO), Chairman Rocco requested Ms. Richmond to re-evaluate the CFO position, as well as all job descriptions for the Board staff, taking into consideration workload, qualifications, and organizational issues, and to develop a new job description for the CFO position and any others as deemed necessary.

Mr. Hull moved to authorize the Chairman, in conjunction with the Search Committee, consisting of John Hull, Tom Stephenson and the Chairman, to work with Ms. Richmond to develop a job description, set qualifications, and go forward with the advertising and implementing the search; and to set a maximum salary amount of \$75,000 for the position of Chief Fiscal Officer. Mr. Kmiec seconded.

Mayor Kuchta moved to amend the motion to set the salary of the CFO at a maximum of \$73,800. Mr. Kmiec seconded. A roll call vote followed. The following members voted in the affirmative: Messrs. Rocco, Hull, Cable, Kmiec, Kuchta, Stephenson, Geyer, Glaros, and Mss. Stevens, and Kister. Ms. Hilvert voted nay. The motion passed.

Mr. Hull moved to vote on the original motion as amended by setting a salary at a maximum amount of \$73,800 for the position of Chief Fiscal Officer. Mr. Kmiec seconded and a roll call vote followed. The following members voted in the affirmative: Messrs. Rocco, Hull, Cable, Kmiec, Kuchta, Stephenson, Geyer, Glaros, and Mss. Hilvert, Stevens, and Kister.

Confirm Next Meeting

Mr. Kmiec made a motion to adjourn the meeting. Mr. Stephenson seconded. All were in favor. The next board meeting will be Wednesday, January 9, 2008, beginning immediately following the Public Hearing, which begins at 10:00 a.m.