



# Petroleum Underground Storage Tank Release Compensation Board

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## MINUTES OF THE 195th MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD September 14, 2022 – 10:00 a.m.

### BOARD MEMBERS IN ATTENDANCE

Jim Rocco  
John Hull  
Larry Burks  
Dan Ridi

### EX-OFFICIO MEMBERS IN ATTENDANCE

Scott King, representing Director Sheryl Creed Maxfield, Ohio Department of Commerce  
Donna Waggener, representing Director Laurie Stevenson, Ohio Environmental Protection Agency  
Michael Lenzo, representing Robert Sprague, State Treasurer of Ohio

### OTHERS IN ATTENDANCE

Starr Richmond	Executive Director, PUSTRCB
Madelin Esquivel	Assistant Director, PUSTRCB
Don Leasor	Chief Fiscal Officer, PUSTRCB
Jonathan Maneval	Executive Assistant, PUSTRCB
Lora Kruse	Administrative Assistant, PUSTRCB
Natasha Natale	Assistant Attorney General
Michael Baker	BJAAM Environmental, Inc.
Dan Adams	Atlas Technical Consultants

Minutes submitted by:

  
Jonathan Maneval  
Executive Assistant

**Call to Order:**

Chairman Rocco convened the one hundred ninety-fifth meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, September 14, 2022.

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

The following members were not in attendance: Steve Bergman, Don Bryant, Scott Fleming, and Tom Stephenson.

**Minutes:**

Chairman Rocco asked if there were any comments or questions regarding the minutes from the June 8, 2022 Board meeting and there were none. Vice-Chairman Hull moved to approve the minutes and Mr. Burks seconded. A vote was taken and all were in favor. The minutes were approved as presented.

**Election of Officers and Committee Member Appointments:**

Chairman Rocco requested motions from the floor for the nomination of officers for the upcoming year. Mr. Burks made a motion to re-elect Jim Rocco as Board Chair and Mr. Ridi made a motion to re-elect John Hull as Vice-Chair. Hearing no other nominations, a vote was taken and all were in favor. Mr. Rocco will remain as Chair and Mr. Hull will remain as Vice-Chair.

***Finance and Rules Committee Appointments***

Chairman Rocco stated that the Chair and Vice Chair serve on both the Finance and Rules Committees. The Chairman then appointed Mr. Stephenson and the designee from the State Treasurer's Office to serve on the Finance Committee. He appointed Messrs. Bergman, Fleming, and the Designee from the Department of Commerce to serve on the Rules Committee.

***2023 Meeting Dates***

Chairman Rocco set the following meeting dates: January 11, February 8, March 15, June 14, September 13, and November 29, 2023. All meetings will begin at 10:00 a.m.

**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 the corrective action section is fully staffed with five environmental coordinators on each side of the state and two corrective action supervisors. He noted that three of the staff members are new and are going through intense training to be brought up to speed.

Mr. King stated that three inspector positions in the release prevention section are vacant. He said BUSTR expects to fill two positions in late September or early October and to fill the third position near the end of the year.

Mr. King reported that 74 responsible party searches planned for the previous fiscal year were completed and the legal staff identified 60 responsible party searches for the current grant year. He noted that 55 searches had been assigned.

Mr. King said the Director of the Commerce and State Fire Marshal are allowing BUSTR's staff to continue working in a telework environment. He noted the staff is required to work in the office two days a week and then work remotely three days a week. He commented that teleworking has enhanced some of their processes. He mentioned that BUSTR is moving from being paper driven to now being electronic focused. He said the changes have increased efficiencies especially with the electronic submission and review of reports.

Mr. King reported that BUSTR is in the process of developing a new database, which will be a completely different platform than what has been used in the past. He said it will be a web based platform with everything being electronic, including public records.

Mr. King said there are currently 21,057 registered tanks, 3,403 registered owners, and 7,012 registered facilities. He said there are 2,156 active releases and 1,750 active closures. He said 31,928 petroleum releases had been granted no further action (NFA) status since the beginning of the BUSTR program.

Mr. King reported that 329 NFAs were issued during the last reporting cycle. He said almost 7,200 inspections were completed in the three-year inspection cycle and noted that a new cycle had just begun. Chairman Rocco asked whether inspections are looking better and Mr. King said there are groups that do really well but there is a small group that only fix an issue when they can get to it.

Mr. King said, in the new inspection cycle, they hope to accomplish more follow up re-inspections of facilities. He said their goal is to focus on release prevention and to stress the importance of the maintenance and care of the underground storage tanks (USTs). The Chairman commented that release prevention is very important to the Board and noted that the longer a release goes on the more expensive it is to deal with.

### **Financial Reports:**

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

### ***Audit Update***

Mr. Leasor stated that he anticipates the auditors to begin their in-house portion of the audit in mid-October. He said the audited financial statements are due to the Auditor of State by December 31, 2022, and ideally the audited financial statements will be presented at the Board's November meeting in order to meet the December 31 filing deadline.

### ***May, June, and July Financials***

Mr. Leasor said the May, June, and July financials were emailed to each member. He said he would be discussing the July 2022 financial report.

Mr. Leasor reported that, as of September 13, 2022, the unobligated account balance was \$16.66 million. He said this amount includes \$1.55 million in STAR Ohio (State Treasury Asset Reserve of

Ohio) and the custodial account, and \$14.11 million invested in U.S. treasuries and U.S. agency callable bonds. He said the obligated account balance for the payment of claims is \$7.28 million.

Mr. Leasor said tank revenues would be discussed as part of his fee statement statistics report.

Mr. Leasor said the claims expense for the month of July was \$713,000, which included the final payment to BP in accordance with the release and settlement agreement the Board authorized in November of 2019. He said since July 1, 2022, a total of \$1.75 million had been paid for claims for fiscal year 2023. He noted this amount is 19% of the \$9 million obligated by the Board for the payment of claims for fiscal year 2023.

Mr. Leasor reported that operating expenses for the month of July were approximately \$146,000. He noted that, as of July 31, expenses should be about 8.3% of the amounts budgeted for the fiscal year. He said telephone expenses were about 9% of the amount budgeted. He noted these expenses include VoIP and internet service, employee messaging software, and renewal of the SSL certificate for the Board's website. He reported that the depreciation expense was 8.5% of the amount budgeted. He said all other expenses are at or below where they should be at this time in the fiscal year.

### ***Fee Statement Statistics***

Mr. Leasor said as of August 31, 2022, the per-tank fees collected for the current 2022 program year were \$7.9 million, which represents 95% of the billed amount. He said that between July 1 and August 31, 2022, approximately \$79,000 was collected for prior years' fees, net of refunds of \$25,200.

Mr. Leasor said, for program year 2022, a total of 15,382 tanks were billed at the standard deductible (\$55,000) per-tank fee and 5,277 tanks were billed at the reduced deductible (\$11,000) per-tank fee. Mr. Leasor said as of August 31, 2022, fees had been paid at the standard deductible rate for 14,223 tanks and at the reduced deductible rate for 5,217 tanks. He said fees for a total of 19,440 tanks had been paid by 2,875 owners. He said this compares to fees being paid for 19,492 tanks by 2,921 owners for the same period of time in the prior year.

Mr. Leasor said, for the program year ended June 30, 2022, fees had been paid for a total of 20,356 tanks by 3,063 owners.

Mr. Leasor said the \$7.96 million collected to date represents 94.7% of the \$8.4 million budgeted for program year 2022. He said so far, for program year 2022, 96.3% of the fees had been received for the 20,180 tanks budgeted.

### **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 refunds totaling \$25,200 had been paid to 31 owners since July 1, 2022. She said the amount of pending refunds currently totals \$1,522,230. She said \$35,850 of pending refunds had been used to offset outstanding fees. She said the total refunds paid plus the amount of refunds used to offset outstanding fees totals \$61,050 for the program year.

Ms. Esquivel said since July 1, 2022, the fees collected by the Attorney General's Office and Special Counsel less collection costs totaled \$36,556. She noted that no accounts had been certified to the Attorney General's Office for collection since July 1, 2022.

Ms. Esquivel reported that five Orders Pursuant to Law are currently under appeal and information to support those appeals is expected. She said three Determinations to Deny a Certificate of Coverage were under appeal and information to support one appeal was received and is under review. She said appeal hearings are scheduled for the other two appeals.

Ms. Esquivel stated that no Ability to Pay Applications are pending review. The Ability to Pay program allows former UST owners experiencing financial difficulty to apply for and receive a determination of their ability to pay delinquent fees.

Ms. Esquivel reported that, as of September 2, 2022, Certificates of Coverage had been issued to 2,324 owners for program year 2022. She said there are 546 Applications for Certificates of Coverage currently being processed and 15 unresolved Pending Denials. She noted that no Determinations to Deny a Certificate of Coverage had been issued for program year 2022.

Ms. Esquivel stated that there are 21 uncashed refund checks totaling \$25,238. She said there are 18 owners with pending refunds totaling \$88,011 to whom more information request letters had been sent notifying them that additional information is needed before the refund may be issued. She said there are 38 owners with pending refunds totaling \$69,465 for which information had been requested, but no responses have been received. Vice-Chairman Hull asked what the timeframe is for a response to the final notice. Ms. Esquivel said they are given 30 days to respond and noted the final notice is sent by certified mail.

### **Claims Reports:**

Chairman Rocco called on Lora Kruse, Claims Administrative Assistant, to present the claims reports.

Ms. Kruse reported, as of September 1, 2022, the total maximum liability of in-house open claims is approximately \$9.92 million. She said using the claim payout ratio of 79%, which is the average ratio of the past five years, the anticipated payout of unpaid in-house claims is about \$7.84 million.

Ms. Kruse reported, as of September 1, 2022, a total of 499 claims with a total face value above the deductible amount were pending review. She reported that the staff is currently reviewing claims received in March 2022. She stated that 19 claim settlement determinations were under appeal, as of September 1, 2022. She explained that these appeals pertain to only three release sites, as multiple appeals pertain to two of the three sites. She said of the 19 settlement determinations under appeal, the staff is waiting for information to support the appeals for 16 of the appealed determinations, additional information provided is under review for two appeals, and an appeal response was issued for one appeal.

Ms. Kruse reported that, during the program year 2021, a total of 530 claim applications were received

and 597 claim determinations were issued. She pointed out that the number of claims received was fewer than the 612 received in the previous year and commented that the number of determinations issued was consistent with the total of 599 determinations issued in the previous year.

Ms. Kruse stated that in the months of July and August 2022, a total of 78 claim applications were received and 95 claim determinations were issued. She noted that no payment could be issued for 16 of these claims as the total face values were below the deductible amounts and the releases had received NFA status.

Ms. Kruse said in program year 2021, the average per claim payout was \$12,733 and the average claim face value that was disallowed was 15.5%. She said the average payout per claim application for the months of July and August 2022 is \$11,400 and the average claim payout is 81.7% of the net claim value (face value – deductible). She said the average claim face value that was disallowed was 14.8%.

Ms. Kruse reported for program year 2021, a total of 74 eligibility applications were received and 90 eligibility determinations were issued. She said this compares to an average of 88 eligibility applications received and 69 determinations issued per year for the previous five program years. She noted that historically, the most common reasons eligibility was denied were because no release was demonstrated or no corrective actions were required by BUSTR.

Ms. Kruse stated that in the months of July and August 2022, a total of 12 eligibility applications were received and 21 eligibility determinations were issued. She said of these eligibility determinations, 15 were approved and six were denied. She said the reasons for denial included one for no release demonstrated, two for late filing of the applications, one for no valid Certificate of Coverage, and two for no corrective actions being required by BUSTR.

Ms. Kruse said as of September 1, 2022, a total of 92 eligibility applications were open. She noted that 17 applications were unreviewable until the necessary reports are received and more information has been requested for five applications. She noted that, as of September 1, 2022, eight eligibility determinations were under appeal. She said additional information was received for six appeals and is under review and a hearing is scheduled for two appeals.

Ms. Kruse reported for program year 2021, a total of 113 cost pre-approval requests were received and 104 cost pre-approval notifications were issued. She said in the months of July and August 2022, a total of 18 cost pre-approval requests were received. She said the cost pre-approval requests included one request for a new remedial action plan (RAP); ten requests for annual costs for RAPs or free product recovery; one request for an interim response action requiring BUSTR approval; two requests for either Tier 3, monitoring or calibration plans; one cost exceedance notification; and three voluntary requests for cost pre-approval. She said as of September 1, 2022, a total of 12 cost pre-approval notifications had been issued and 47 cost pre-approval requests were pending review. She commented that four additional cost pre-approval notifications were issued since September 1, 2022.

Vice-Chairman Hull asked if any Fund-covered sites with cost pre-approval had received an NFA and been closed out in the last year. Ms. Kruse said she would imagine that some probably did, but she would need to get back to him with the answer. Chairman Rocco commented that the EPA is trying to

come up with approaches to close out sites that have been in long-term monitoring so they can be granted NFA status. He noted that after a while, yearly monitoring costs of \$25,000 or \$30,000 can become a lot of money. Executive Director Starr Richmond stated that she did not believe there are many sites with ongoing monitoring. She commented that the claims staff recently met with some of BUSTR's staff and will be working together to evaluate and consider alternatives for RAPs where the same approach is proposed year after year. Chairman Rocco said RAPs have an assumed timeframe to meet the objective and the length they have been ongoing ought to be tracked. He said if the remediation system is not making a lot of progress then the system is wrong or there is something with the respect to the site that is not known. Director Richmond mentioned that a lot of injection RAPs are being submitted, which had not been seen in decades. She said some requests have been approved and the work has been done. She noted that if the results are positive, similar technologies can be approved for similar sites. Vice-Chairman Hull commented that there is now a lot of science behind the use of bio injection. Mr. Burks asked if placing land use restrictions on properties is an option to lift monitoring requirements and Vice-Chairman Hull said that it could be. Chairman Rocco said that looking at trends in data and lines of evidence can be used to draw a conclusion about the stability of a plume and then restrict the land use. He said a point can be reached where additional efforts will have very little impact. The Chairman indicated that he has been working with the EPA to come up with a list of alternative approaches for sites to get NFA status.

### **New Business:**

#### ***Hardship Application***

Chairman Rocco called upon Don Leasor, Chief Fiscal Officer, to present the hardship application.

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

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

#### **Claim # 22741-0001/02/05/14, Owner – Route 53 Service, LLC**

Mr. Leasor said Route 53 Service, LLC is the responsible party for a release discovered in program year 2013 at 8910 South State Route 53 in McCutchenville, Ohio. This is the seventh request for hardship status.

Mr. Leasor stated that, to date, the Fund has reimbursed \$495,000 for corrective action costs for this release. He said no claims are currently pending review and the cost of corrective action work expected to be conducted over the next 24 months is estimated to be \$145,000.

Mr. Leasor said that Route 53 Service, LLC purchased the facility in October of 2012 and the release was discovered in February of 2014. He said that following the release, the facility was closed until it reopened almost two years later. He said the 2019, 2020, and 2021 IRS tax forms submitted with the application reported net income of \$25,000, \$28,000, and \$49,000, respectively. He stated that the application included tax information for Route 53 Service LLC along with personal financial information for Ms. Khaira. He noted that the U.S. EPA ABEL model used for the review of corporations does not take into account any personal financial information. He stated that the U.S. EPA ABEL model estimates a less than 50% probability that Route 53 Service, LLC can afford \$145,000 in corrective actions costs estimated to be incurred over the next two years. Therefore, the Director is recommending the Board approve the application and grant hardship status to Route 53 Service, LLC. Vice-Chairman Hull moved to approve the application and Mr. Burks seconded. A vote was taken and all members voted in the affirmative. The motion passed.

**Certificates of Coverage – Ratifications:**

Chairman Rocco called on Madelin Esquivel, Assistant Director, to present the lists of owners who have either been issued or denied a Certificate of Coverage for ratification by the Board.

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

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

Ms. Esquivel requested the Board ratify the Director's actions with respect to the issuance of the program year 2021 Certificates of Coverage for the 77 owners of the 338 facilities included on the program year 2021 Certificates issued list.

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

Ms. Esquivel requested the Board ratify the Director's actions with respect to the denial of the program year 2021 Certificates of Coverage for the 287 tanks located at the 107 facilities included on the program year 2021 Certificates denied list.



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

Ms. Esquivel requested the Board ratify the Director's actions with respect to the issuance of the program year 2022 Certificates of Coverage for the 2,337 owners of the 5,459 facilities included on the program year 2022 Certificates issued list.

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

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

**Executive Session:**

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

***Reconvene Meeting***

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

**Confirm Next Meeting and Adjourn:**

Chairman Rocco stated that the next Board meeting will be held on Wednesday, November 30, 2022, at 10:00 a.m. He said the Finance Committee would be meeting at 9:00 a.m. prior to the Board meeting.

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