



Petroleum Underground Storage Tank Release Compensation Board

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**MINUTES OF THE 200th MEETING OF THE
PETROLEUM UNDERGROUND STORAGE TANK
RELEASE COMPENSATION BOARD
September 13, 2023 – 10:00 a.m.**

BOARD MEMBERS IN ATTENDANCE

Jim Rocco
Steve Bergman
Don Bryant
Scott Fleming
Tom Stephenson

EX-OFFICIO MEMBERS IN ATTENDANCE

Scott King, representing Director Sheryl Creed Maxfield, Ohio Department of Commerce
Donna Waggener, representing Director Anne Vogel, Ohio Environmental Protection Agency
Harold Anderson, representing Robert Sprague, State Treasurer of Ohio

OTHERS IN ATTENDANCE

Starr Richmond	Executive Director, PUSTRCB
Madelin Esquivel	Assistant Director, PUSTRCB
Don Leasor	Chief Fiscal Officer, PUSTRCB
Hannah Brame	Claims Supervisor, PUSTRCB
Jonathan Maneval	Executive Assistant, PUSTRCB
Beth Fligner	Assistant Attorney General
Howard Silver	Hearing Officer
Scott Adams	State Treasurer's Office
Dan Adams	Atlas Technical Consultants
Michael Baker	BJAAM Environmental, Inc.

Minutes submitted by:


Jonathan Maneval
Executive Assistant

Call to Order:

Chairman Rocco convened the two hundredth meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, September 13, 2023.

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

Chairman Rocco stated that Larry Burks and Dan Ridi were not in attendance as their reappointments had not gone through and they were no longer sitting members of the Board. Chairman Rocco announced that Ohio Treasurer Robert Sprague had appointed Scott Adams and Harold Anderson as his new designees to the Board and asked them to introduce themselves. Messrs. Adams and Anderson briefly introduced themselves and shared some of their background.

Minutes:

Chairman Rocco asked if there were any comments or questions regarding the minutes from the June 14, 2023 Board meeting and there were none. Mr. Stephenson moved to approve the minutes and Mr. Fleming seconded. A vote was taken and Ms. Waggener and Messrs. Bryant, Fleming, Stephenson, Anderson, King, and Rocco were in favor. Mr. Bergman abstained. 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. Bryant made a motion to re-elect Jim Rocco as Board Chair and Mr. Fleming made a motion to elect Mr. Stephenson as Vice-Chair. Hearing no other nominations, a vote was taken, and all were in favor. Mr. Rocco will remain as Chair and Mr. Stephenson will serve 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. Fleming and the designee from the State Treasurer's Office to serve on the Finance Committee. He appointed Mr. Bergman and the Designee from the Department of Commerce to serve on the Rules Committee.

2024 Meeting Dates

Chairman Rocco set the following meeting dates: January 10, February 14, March 13, June 12, September 11, and November 20, 2024. 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 the U.S. Environmental Protection Agency (U.S. EPA) has issued guidance concerning environmental justice (EJ) criteria and a focus on EJ is now part of both the corrective action and release prevention sections. He said BUSTR has been working with the U.S. EPA to get the EJ geographic information system (GIS) data layers into a GIS system that BUSTR currently uses and noted they will need to report information to the U.S. EPA almost every quarter. He stated that 60 responsible party searches are being conducted this year and the U.S. EPA wants the majority of searches to be for EJ communities. He noted that 51 of the responsible party search files were distributed to vendors and they are currently working on those.

Mr. King said the federal fiscal year closes at the end of September, and they are closing out as many no further actions (NFAs) as they can. He said the U.S. EPA set a goal to issue 460 NFAs for the fiscal year, that 351 NFAs had been issued so far, and they project between 388-390 NFAs will be issued for the year. He said close to 11,000 environmental reviews were conducted during the last year and over 2,700 on-site inspections were conducted during the year. He noted that violations were found at about 1,400 of those inspections and they are seeing an increase in certain violations. He reported there are 21,106 registered tanks, just over 3,300 registered tank owners, and 6,972 facilities with regulated tanks. He mentioned there was news of a big company out of the south planning an expansion in the western part of the state, which will bring some new things that Ohio has not seen in terms of size, and the number of dispensers and tanks. He said BUSTR is in the planning phases of its review.

Mr. King reported the planned replacement of the OTTER (Ohio Tank Tracking & Environmental Regulations) database is moving forward and going very well. He said they are projecting to go live with the new database in November or December 2024. He said the BUSTR staff is continuing to work a hybrid schedule with staff working remotely two days a week. He noted that BUSTR is transitioning to a complete online submittal for most customers they serve.

Mr. Bergman asked if additional paperwork is necessary for facilities within EJ communities. Mr. King said the U.S. EPA wants BUSTR to increase inspections of facilities in the EJ communities and the corrective action side is doing everything it can to ensure releases in the EJ communities are stabilized to prevent any further exposure. He said further, they are conducting responsible party searches to identify parties responsible for abandoned tanks or for the investigation and cleanup of releases. He commented that this makes the community more habitable and the property more useful in the future for community redevelopment. Mr. Bergman asked if this would have any impact on the Fund. Chairman Rocco said the Board's process is a first come, first serve approach, and claims are generally processed on that basis. He said, in theory, if BUSTR prioritizes these sites and there ends up being more activity, there may be more claims coming in.

Vice-Chairman Stephenson stated that he is seeing small operators that are not complying with requirements until they are inspected and told there is something that needs to be fixed. He asked if these operators are out of luck if a release were to occur prior to the inspection or prior to them coming into compliance. Chairman Rocco said if there is an inspection with violations found and a release occurred, then that release would not be covered. Executive Director Starr Richmond clarified that the violation would need to be related to the release for it to result in a denial of eligibility. She commented that issues of noncompliance are by far the hardest determinations to make and require a lot of review. She said additional information may be requested and BUSTR files may be pulled and these are

complicated reviews. Vice-Chairman Stephenson commented that it would make everyone's jobs easier if owners would get on the bandwagon and do what they are supposed to do. Mr. King noted that a violation notice could be issued because the appropriate paperwork was not available when the inspector arrived at the site. He said these minor issues can be resolved if the paperwork is submitted within the next 30 days. He mentioned that BUSTR revamped the compliance process in the spring and are moving violations forward into enforcement status quicker than they had in previous years. He noted that in the current three-year inspection cycle just over 2,700 inspections were completed and almost 1,900 re-inspections were generated because compliance issues were found, and they needed to go back to the facility to make sure the violations were fixed. He said reinspection is difficult for BUSTR because of staffing and the number of facilities requiring reinspection.

Chairman Rocco commented that a major hydrogen plant is being built in the Toledo area and said it will be interesting when hydrogen fueling and electric vehicle charging starts to be seen. Mr. King said hydrogen fuel is coming to Ohio and he had briefed the State Fire Marshal on it.

Financial Reports:

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

Audit Update

Mr. Leasor said the audit entrance meeting is scheduled with the auditors on October 10, 2023, and commented 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, 2023.

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 2023 financial report.

Mr. Leasor reported that, as of September 11, 2023, the unobligated account balance was \$20.23 million. He said this amount includes \$5.99 million in STAR Ohio (State Treasury Asset Reserve of Ohio) and the custodial account, and \$14.24 million invested in U.S. treasuries and U.S. agency callable bonds. He said the obligated account balance for the payment of claims is \$7.18 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 \$331,000. He said since July 1, 2023, a total of \$887,000 had been paid for claims for fiscal year 2024. He noted this amount is 11.1% of the \$8 million obligated by the Board for the payment of claims for fiscal year 2024.

Mr. Leasor reported that operating expenses for the month of July were approximately \$134,000. He noted that, as of July 31, expenses should be about 8.3% of the amounts budgeted for the fiscal year and reported all expenses are at or below where they should be at this time in the fiscal year. He commented that a portion of the budget for temporary services is being used as the Office Assistant resigned and a temporary employee is being used to fill the vacancy.

Fee Statement Statistics

Mr. Leasor said as of August 31, 2023, the per-tank fees collected for the current 2023 program year were \$7.95 million, which represents 96% of the billed amount. He said between July 1 and August 31, 2023, just under \$37,500 was collected for prior years' fees, net of refunds of \$26,200. He said for the same period in the previous fiscal year, \$7.88 million in tank fees were collected, and \$78,400 in prior year fees were collected net of refunds of \$25,200.

Mr. Leasor said between the fee statement mailing in April 2022 and August 31, 2023, \$8.38 million was collected for program year 2022 fees and \$105,000 was collected for prior year fees net of refunds paid of \$256,000. He said, for program year 2023, a total of 15,526 tanks were billed at the standard deductible (\$55,000) per-tank fee and 5,195 tanks were billed at the reduced deductible (\$11,000) per-tank fee. Mr. Leasor said as of August 31, 2023, fees had been paid at the standard deductible rate for 14,610 tanks and at the reduced deductible rate for 5,087 tanks. He said fees for a total of 19,697 tanks had been paid by 2,827 owners. He said this compares to fees being paid for 19,441 tanks by 2,875 owners for the same period of time in the prior year.

Mr. Leasor said, for the program year 2022, fees had been paid for a total of 20,359 tanks by 3,011 owners.

Mr. Leasor said the \$7.98 million collected to date represents 95.7% of the \$8.35 million budgeted for program year 2023. He said the 19,697 tanks with fees paid for program year 2023, reflect 97.2% of the 20,260 tanks budgeted to apply for Certificates of Coverage this year.

Compliance and Fee Assessment Report:

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

Ms. Esquivel reported that refunds totaling \$26,200 had been paid to nine owners since July 1, 2023. She said the amount of pending refunds currently totals \$1.3 million. She said \$2,750 of pending refunds had been used to offset outstanding fees this program year. She said since July 1, 2023, the fees collected by the Attorney General's Office and Special Counsel less collection costs totaled \$8,674. She reported that no accounts had been sent to the Attorney General's Office for collection since July 1, 2023. She pointed out that outstanding fees of \$584,490 had been certified for collection in program year 2022.

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

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

Ms. Esquivel reported that Certificates of Coverage had been issued to 1,674 owners for program year 2023. She said there are 1,135 Applications for Certificates of Coverage currently being processed.

She said for program year 2023, there are 18 owners with unresolved Pending Denials. She noted that no Determinations to Deny a Certificate of Coverage had been issued for program year 2023.

Ms. Esquivel stated that there are 44 uncashed refund checks totaling \$56,133. She said there are 15 owners 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 40 owners with pending refunds totaling \$69,415 for which information had been requested, but no responses have been received.

Ms. Esquivel pointed out for program year 2022 the amount of refunds paid plus the amount of refunds used to offset outstanding fees totaled \$332,610. She said it was a big year for the staff, and they are really proud of the accomplishment.

Ms. Esquivel announced that she recently accepted a position with the Department of Commerce, Division of Industrial Compliance and said her last day working for the Board would be October 6, 2023. She thanked the Board for giving her the opportunity to work as Assistant Director and noted she has been in the position for 13 years. She thanked Director Richmond and the staff and said it was a pleasure working with everyone.

Claims Reports:

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

Ms. Brame reported, as of September 1, 2023, the total maximum liability of in-house open claims is approximately \$11.33 million. She said using the claim payout ratio of 77%, which is the average ratio over the past five years, the anticipated payout of unpaid in-house claims is about \$8.72 million.

Ms. Brame reported, as of September 1, 2023, a total of 591 claims with face values above the deductible amount were pending review and noted that review of one claim is pending receipt of requested information. She reported that the claims staff are currently reviewing claims received prior to February 2023. She stated that, as of September 1, 2023, a total of 23 claim determinations were under appeal. She explained that these appeals pertain to only seven release sites, as there are multiple appeals for two of those sites. She noted the staff is waiting for supporting information for 19 appeals, additional information provided is under review for three appeals, a hearing was held for one appeal.

Ms. Brame reported that, during program year 2022, a total of 482 claim applications were received and 518 claim determinations were issued. She pointed out the number of claim determinations issued falls within the range of 447-695 claim determinations issued in the past five years.

Ms. Brame stated that in the months of July and August 2023, a total of 86 claim applications were received and 60 claim determinations were issued. She mentioned that an additional 28 claim determinations with a total face value of \$415,000 were issued on August 31, 2023. However due to a problem with the Post Office, they had to be re-dated and reissued on September 6, 2023. She noted that those determinations will be reflected in the September 2023 claim numbers.

Ms. Brame said in program year 2022, the average per-claim payout was \$12,343 and the average claim face value that was disallowed was 21.9%. She pointed out the percentage of disallowed costs was higher than in previous years and explained that the percentage was impacted by the December 2022 settlement agreement with Sunoco for which 10 claims were settled with \$0 payment. She said the average payout per claim application for program year 2023 is \$11,601 and the average claim payout is 67.1% of the net claim value (face value – deductible). She said the average claim face value that was disallowed was 28.2%. She commented that there was an atypical set of claims with a high percentage of disallowed costs attributed to cost splitting between eligible and ineligible releases and for lack of cost pre-approval. Chairman Rocco asked if any big settlements are scheduled for this year, and Director Richmond indicated there are not.

Ms. Brame reported for program year 2022, a total of 69 eligibility applications were received and 76 eligibility determinations were issued. She said this compares to an average of 87 applications received and 73 determinations issued in the previous five years. She said, so far for program year 2023, a total of 15 eligibility applications were received and 25 eligibility determinations were issued. She said of these eligibility determinations, 16 were approved and nine were denied. She said the reasons for denial included one for no release demonstrated, two for late filing of the eligibility application, two for lack of a valid Certificate of Coverage, two for out-of-compliance tanks, and two for no corrective action required by BUSTR. She said as of September 1, 2023, a total of 85 eligibility applications were open. She noted that eight of these applications were unreviewable until the necessary reports are received, and more information has been requested for six of these applications. She also noted that, as of September 1, 2023, ten eligibility determinations were under appeal. She said additional information is expected for four appeals, information for five appeals has been received and is under review, and a hearing was held for one appeal. Chairman Rocco asked what the average time is for processing an eligibility application. Director Richmond said it is about 12 months and mentioned that the staff is trying to catch up. Ms. Brame pointed out there was a significant increase in the number of applications submitted in program year 2019. She said the staff had to work through those applications and has made significant progress.

Ms. Brame reported for program year 2022, a total of 104 cost pre-approval requests were received and 109 cost pre-approval notifications were issued. She said in the months of July and August 2023, a total of 22 cost pre-approval requests were received. She said the cost pre-approval requests included five requests for new remedial action plans (RAPs); 10 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 or monitoring/calibration plans; one cost exceedance notification; and three voluntary requests for cost pre-approval. She said as of September 1, 2023, a total of 16 cost pre-approval notifications had been issued and 47 cost pre-approval requests were pending review.

Unfinished Business:

Website Redesign Project

Chairman Rocco said at the previous meeting, the Board discussed funding for a new website, and since then Director Richmond and Mr. Leasor went out and obtained pricing for it, and the Board would need to readdress it in the capital budget. He then called on Mr. Leasor to discuss the project.

Mr. Leasor said at its June 14, 2023 meeting, the Board approved a fiscal year 2024 total capital budget of \$100,000 with the furniture and equipment line item at \$5,000; and the data processing and electronics line item at \$95,000, which included \$50,000 for costs to redesign the website. He said, at the time of the meeting, the staff was still in the process of soliciting proposals for the website redesign project. He said the budget amount is being revisited now that proposals had been received.

Mr. Leasor said proposals were solicited from website development vendors, and four responded to the request. He said after an initial review, one vendor was removed because although the company had a presence in Ohio, the actual developer doing the work would be located outside of the United States. He said the remaining three vendors were provided a listing of the Board's current website pages and links, the State of Ohio's criteria for website design, and a listing of other state boards and commissions whose websites are well designed. He said multiple meetings were held with each vendor and the staff reviewed multiple websites developed by each vendor. He said the quotes from the three vendors ranged between \$35,000 and \$149,000. He said, based on the vendors' understanding of the project, their previous website development work, and availability of experienced staff, the recommendation is for the Board to enter into an agreement with 10 Pound Gorilla to develop the new website at a cost not to exceed \$70,000. He said, if the Board agrees with using 10 Pound Gorilla, approval was needed to increase the fiscal year 2024 capital budget data processing and electronics line item by \$20,000, which would bring the total data processing and electronics line item to \$115,000, and the total capital budget to \$120,000.

Mr. Bryant inquired if the recommended vendor was in the middle of the quotes ranging from \$30,000 and \$140,000, and Chairman Rocco confirmed that their quote was in the middle. The Chairman noted that the proposals were significantly different, and the one on the high end seemed to be for much more than what is needed. He said the concern with the lower proposal was that in the end, there would probably be a much higher cost because the detail in the proposal was somewhat limited. He said the recommended vendor provided a lot more detail on the work that would be done and the amount of time to be spent on each phase of the project. He said he looked at their work product and said they have developed some nice websites. Mr. Bergman asked if the proposal is based on a time and materials not to exceed an amount and the Chairman confirmed that it is. Mr. Bryant asked approximately how long it will take. Chairman Rocco said the proposal is for between 350 and 400 hours but noted those hours will be spread out over quite some time as the staff go over the initial design and then there is back and forth. He said his guess would be six to eight months to have something and it will be a function of how well things go with the design. Director Richmond said once the project gets started, there is a team in house that will work with the developers, and she felt it will go pretty quickly and should be done by the end of the fiscal year.

Chairman Rocco then requested a motion to amend the fiscal year 2024 capital budget to increase the data processing and electronics line item by \$20,000, bringing the total data processing and electronics line item to \$115,000 and the total fiscal year 2024 capital budget to 120,000. Vice-Chairman Stephenson so moved, and Mr. Bergman seconded. Ms. Waggener asked if website maintenance was included in the price and if an adjustment to the operating budget was needed. Director Richmond said she did not think so as the daily updates to the website would be handled by Board staff and there was money included in the budget for the website hosting. The Chairman asked if there were any other

questions. Hearing none, a vote was taken, and all were in favor. The motion passed. Chairman Rocco then requested a motion to authorize the chairman to enter into an agreement with 10 Pound Gorilla for website development services in an amount not to exceed \$70,000 for fiscal year 2024. Mr. Bergman so moved, and Mr. Fleming seconded. A vote was taken, and all were in favor. The motion passed.

New Business:

Administrative Appeals

Chairman Rocco called upon Howard Silver, the Board's hearing officer, to present his Reports and Recommendations regarding the administrative appeals.

**Owner Number: 18267 Eligibility ID: 0001, Owner – Anthony T. and MaryAnne Zeakes
Sunoco #0002-5940, 401 Main Street, Bridgeport, OH 43912**

Mr. Silver said the first case being presented to the Board concerns a Sunoco station owned by Anthony and MaryAnne Zeakes. He said on October 4, 2019, the product piping for the regular gasoline UST failed a pressure test. He said the failed test result was required to be reported within 24 hours, or by October 5, 2019. He explained that, according to the Board's rules, in order to qualify to receive reimbursement of corrective action costs, an eligibility application must be filed within one year of the date the incident was required to be reported. He said since the failed test was required to be reported on October 5, 2019, the eligibility application needed to be filed by October 5, 2020. Mr. Silver stated that the eligibility application was filed on April 5, 2021, which was six months passed the deadline.

Mr. Silver said Mr. Zeakes submitted a written position statement, which is set out verbatim in the report, and in his statement, Mr. Zeakes explained he had suffered some serious health issues, which caused him to miss the filing deadline. Mr. Silver noted the statement also indicated he had been unable to contact the Petroleum Board's staff because of the COVID pandemic and lockdown. However, at the hearing, there was testimony that the Board's staff was available to receive telephone calls, email, and other correspondence, and those were still being acted upon throughout the pandemic. Mr. Silver said although it may have been difficult to meet face-to-face, the Board's staff was reasonably available.

Mr. Silver said the Board is empowered to promulgate rules and one of the Board's rules instructs the Director of the Financial Assurance Fund that eligibility for reimbursement can only be allowed if certain conditions are met. He said the very first condition is that an eligibility application must be filed within one year from the date the release incident was required to be reported to the State Fire Marshal. He said the application was filed six months late and he did not find any grounds in order to find an exception. He said the Director of the Financial Assurance Fund acted lawfully and correctly in denying the application, and therefore, he recommended to the Board that Director Richmond's determination be upheld.

Chairman Rocco said the pandemic was an anomaly in claims processing and asked if there were reports of significant issues in claim submissions. Director Richmond said there may have been two or three. In response to questioning, Mr. Silver said he believed the Governor issued a State of Emergency

in March of 2020 and mentioned that the Governor issued an Executive Order extending deadlines in certain instances, such as the renewal of a license. He commented that he felt the Executive Order did not apply in this situation and noted no argument was made concerning it. He said the filing deadline was just missed and it could have been avoided. Chairman Rocco asked if there were any other questions. Hearing none, the Chairman requested a motion to accept the hearing officer's recommendation. Mr. Anderson so moved, and Mr. Fleming seconded. A roll call was taken, and the following members voted in the affirmative: Messrs. Rocco, Bergman, Bryant, Fleming, Stephenson, King, Anderson, and Ms. Waggener. There were no nays. The motion passed.

Claim Number: 23968-0001/01/25/21-A, Owners - Lucky Stars Management, LLC and Hilltop One Quick Stop, LLC, 418 E. Main Street, Williamsburg, OH 45176

Mr. Silver said the second case concerns a convenience store located in Williamsburg in Clermont County, Ohio. He said the real estate is owned by Lucky Stars Management, LLC and the business operation is owned by Hilltop One Quick Stop, LLC and the managing member for both LLCs is the same person, Mr. Patel.

Mr. Silver said there were gasoline and diesel underground storage tanks at the site, which were removed on January 12, 2021, and soil sampling was done. He explained that a closure report was submitted which showed naphthalene in (stockpile) soil sample SP-16 at a concentration higher than the re-use level but below the action level set by the State Fire Marshal. He said costs were claimed for the reimbursement of soil removal, but the Director of the Financial Assurance Fund determined the costs were not reimbursable because the soil was not contaminated above the State Fire Marshal's action levels. He said an additional reason costs were denied was because of a 15% markup, which is not allowed by rule. Mr. Silver said Mr. Patel's counsel attended the hearing and did not disagree with the fact that the concentration was below the action level set by the State Fire Marshal. Mr. Silver said Mr. Patel's counsel explained that new tanks were installed and the warranty for the new tanks would be voided had the soil not been removed. Mr. Patel's counsel said the state government should be cognizant of this anomalous situation where owners might be left between a rock and a hard place, and the Board should take into consideration that the soil had to be removed for warranty purposes.

Mr. Silver said the rules promulgated by the Board are authoritative and instruct the Director of the Financial Assurance Fund not to approve reimbursement of soil removal costs if its contamination level is below the action level set by the State Fire Marshal. Mr. Silver said that is the factual circumstance in this case and is the basis of his finding that the Director was correct, and he recommended to the Board that the Director's denial of the costs be upheld.

Chairman Rocco said the statute is very specific that only costs necessary to conduct corrective action can be reimbursed and if the soil is below the action levels, it is not subject to corrective actions required by the State Fire Marshal. He said he was perplexed by the question of the warranty and commented that the re-use level is not a standard applicable to the Board. Mr. Silver said he was not familiar with the re-use level and Vice-Chairman Stephenson explained that excavated soil that is below the re-use level can be used for any purpose. Chairman Rocco said, in this particular case, they could have dug out the sample and reused the rest of the soil. Chairman Rocco asked if there was any other discussion. Hearing none, the Chairman requested a motion to accept the hearing officer's

recommendation. Mr. Bryant so moved, and Vice-Chairman Stephenson seconded. A roll call was taken, and the following members voted in the affirmative: Messrs. Rocco, Bergman, Bryant, Fleming, Stephenson, King, Anderson, and Ms. Waggener. There were no nays. 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 2022 Certificates of Coverage for the 40 owners of the 102 facilities included on the program year 2022 Certificates issued list.

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

Ms. Esquivel requested the Board ratify the Director's actions with respect to the denial of the program year 2022 Certificates of Coverage for the 21 tanks located at the nine facilities included on the program year 2022 Certificates denied list.

Mr. Bryant moved to ratify the denial of the 2022 Certificates of Coverage that were listed. Mr. Fleming 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 2023 Certificates of Coverage for the 1,239 owners of the 2,554 facilities included on the program year 2023 Certificates issued list.

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

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

Confirm Next Meeting and Adjourn:

Chairman Rocco said the next Board meeting will be held on Wednesday, November 29, 2023, at 10:00 a.m. He said the Finance Committee would be meeting at 9:00 a.m. prior to the Board meeting.

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