



Petroleum Underground Storage Tank Release Compensation Board

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CORRECTED VERSION

MINUTES OF THE 140th MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD

January 11, 2012

BOARD MEMBERS IN ATTENDANCE

Jim Rocco
John Hull
Duane Cable
Brian Epperson
Cheryl Hilvert
Steve Hightower
Tom Kmiec
Don Kuchta
Tom Stephenson

EX-OFFICIO MEMBERS IN ATTENDANCE

William Vedra, representing Director David Goodman, Ohio Department of Commerce
Chris Geyer, representing Director Scott J. Nally, Ohio Environmental Protection Agency

OTHERS IN ATTENDANCE

Starr Richmond	Executive Director, PUSTRCB
Don Leasor	Chief Fiscal Officer, PUSTRCB
Madelin Esquivel	Assistant Director, PUSTRCB
Cindy Duann	Environmental Claims Supervisor, PUSTRCB
Michael Grube	Environmental Claims Analyst, PUSTRCB
Ellen Mitton	Administrative Coordinator, PUSTRCB
John Hickey	Fiscal Specialist, PUSTRCB
Krista Nichols	Accounts Receivable Specialist, PUSTRCB
Cheryl Hawkinson	Assistant Attorney General
Stephen Hightower, II	Hightower Petroleum
Sally Scheuermann	Speedway, LLC
Eric Swaisgood	Speedway, LLC
Doug Darrah	ATC Associates
Christie Kuhlmann	Stantec
Keith Kuhlmann	Stantec
Yvonne Monti	Sunoco, Inc.
Michael Byrne	Sunoco, Inc
Earl Warren Bennett	Observer
James Hill	Self-Employed

Minutes submitted by:

Ellen S. Mitton
Administrative Coordinator

Call To Order:

Chairman Rocco convened the one hundred fortieth meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, January 11, 2012. The following members were in attendance: Jim Rocco; John Hull; Duane Cable; Cheryl Hilvert; Tom Kmiec; Steve Hightower; Mayor Don Kuchta; Brian Epperson; Tom Stephenson; Bill Vedra representing Director David Goodman, Ohio Department of Commerce; and, Christopher Geyer, representing Director Scott J. Nally, Ohio Environmental Protection Agency.

Chairman Rocco asked if there were any comments, questions, or discussion regarding the minutes from the November board meeting and there were none. Mayor Kuchta moved to approve the minutes. Mr. Hightower seconded the motion. A vote was taken and all members voted in the affirmative. The motion carried.

BUSTR Report:

Chairman Rocco called upon Bill Vedra, Bureau Chief, to present the BUSTR report.

Mr. Vedra stated his report had been provided to each Board member and asked if there were any questions. Chairman Rocco asked Mr. Vedra the status of the BUSTR rules. Mr. Vedra stated all of the BUSTR rules had been completed and filed with the Joint Committee on Agency Rule Review (JCAAR). Mr. Vedra said the JCARR hearing would be held either February 12 or March 8, 2012, and the exact date would be posted on the BUSTR website. He said the BUSTR rules had a tentative effective date of July 1, 2012.

Mr. Vedra said BUSTR intends to hold seminars at the State Fire Marshal's Office regarding the changes and/or additions to the rules. He said these seminars are expected to be in June since the effective date of the rules would be July 1, 2012. He said the Petroleum Board would be included in these seminars.

Chairman Rocco stated the Board's Rules Committee would focus on the Petroleum Board's rules to ensure that they coincide with BUSTR rules. He also suggested BUSTR hold seminars in four locations throughout the state; i.e., Cleveland, Toledo, Cincinnati, and Columbus. He said the Petroleum Board held seminars in these locations and they had been well attended. Chairman Rocco and Ms. Richmond both stated that the Board staff would be available to assist in organizing and/or participating in these seminars.

Financial Report:

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

Audit Report

Mr. Leasor stated a final copy of the audited Financial Statements and Supplementary Financial Information for the years ended June 30, 2011 and 2010 had been distributed to each member. He stated Schneider Downs submitted the information to the Auditor of State prior to the December 31, 2011 deadline. Mr. Leasor said a notice from the Auditor of State's office indicated the audited financial statements passed the desk review with no changes necessary. He said the Board would be notified when the Auditor released the audit reports. In response to Chairman Rocco's question, Mr. Leasor confirmed he does not anticipate any changes being made to the audit reports.

November Financials

Mr. Leasor stated the October and November financials had been emailed to each member. He asked if there were any questions or concerns regarding these reports. Hearing none, Mr. Leasor began with the November financials.

Mr. Leasor said as of January 10, 2012, the unobligated balance is \$6.9 million. He said there is currently \$5.7 million in the obligated account that is set aside for fiscal year 2012 claim settlement payments.

Mr. Leasor said the claims expense for November was \$606,000; and, as of January 10, 2012, the claims paid expense this fiscal year is approximately \$3.3 million.

Mr. Leasor said after fee refund payments were deducted, approximately 97.4% of budgeted revenues had been collected. He said Madelin Esquivel, Assistant Director, would present a more concise report regarding fee collections and refunds later in the meeting.

Mr. Leasor noted the rent and employee expense line items show no dollar amount for the month of November because the invoices were paid in early December 2011. He said the new lease had not yet been fully executed, therefore the amount listed in the July through October rent columns reflect the old rate. He said an adjustment would be paid reflecting the difference between the new rate and the old rate when the lease is executed.

Mr. Leasor noted that the salary line item is high this month due to the statewide voluntary annual payout of sick leave. He said this is a once a year program that provides employees the option to receive a reduced percentage rate of payment for unused sick leave.

Mr. Leasor stated that the Governor approved merit increases for the Board's staff and noted these increases went into effect January 1, 2012. He said the last pay increase the staff received had been in July 2008. Mr. Leasor said he would monitor the salary expense line item to assess the impact of the merit increases on the budget.

Mr. Leasor said as of November 30, the Legal & Professional expense is approximately 37% of the amount budgeted. He said to date the Attorney General's collection costs totaled \$21,400 and Special Counsels' fees were \$49,900. He said the Attorney General's collection costs of \$21,400 are offset by \$15,818 paid by owners for collection costs.

Mr. Leasor said as of November 30, the postage line item is approximately 74% of the budgeted amount and falls in line with prior years' expenses for the same time period. He said as of November 30, the unemployment compensation line item was 46% of the amount budgeted due to charges assessed by the Ohio Department of Job & Family Services for May and June of fiscal year 2011 being paid in fiscal year 2012.

Mr. Leasor noted all other expenses are on target for this time in the fiscal year.

Claims Report:

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

Ms. Duann said the current total maximum liability of in-house above deductible open claims is approximately \$28 million. She said the average clean up costs for all sites is \$126,508 per site and the average payout is \$67,854 per site.

Ms. Duann said sites cleaned up exclusively under BUSTR's 1999 and/or 2005 Risk-Based Corrective Action (RBCA) rule had an average clean-up cost of \$66,922 per site. She said after applying the deductible and disallowing non-reimbursable costs, the average claim payout is \$20,492 per site. She stated less than 50% of sites cleaned up so far under the RBCA rules met the deductible. Ms. Duann said for the first six months of this program year, the Board received an average of 64 claim packages per month and settled or closed an average of 63 per month. She said fewer settlements had been issued in December because the only mailing was on December 22, 2011. She said the staff had set a higher goal associated with settlement determinations to be issued in January 2012. Ms. Duann stated for the first half of PY 2011 the total settlement offer is \$3.34 million.

Ms. Duann said for the first half of this program year the Board received 32 eligibility applications and issued 31 determinations. She said 77% of these determinations were approvals and 23% were denials of eligibility. Ms. Duann said eligibility had been denied because a valid Certificate of Coverage did not exist or the tanks were out of compliance. She stated there were no denials due to late filing of the application.

Ms. Duann said that during the first six months of this program year, the Board received an average of 17 pre-approval requests per month and an average of 17 cost pre-approval notifications were issued per month.

Ms. Duann explained there is a mandatory cost pre-approval and also a voluntary cost pre-approval process. She said it appears there is some confusion among many owners and consultants regarding when to submit requests for cost pre-approval. She said as a result of the November 30, 2009 rule change, a request for cost pre-approval is required only when the estimated costs exceeded \$6,000 for Tier 3 Evaluation Plans, Monitoring Plans associated with tier evaluation reports, and, plans to calibrate or disprove the fate and transport model. Ms. Duann suggested that information regarding rule O.A.C. 3737-1-12.1 be provided in future outreach communications.

In response to Mr. Hightower's question, Chairman Rocco explained that the standard deductible of \$55,000 and the reduced deductible of \$11,000, which is offered to owners with six or fewer tanks, were set in the early 1990's. He said at that time, the average cleanup cost per site had been between \$150,000 and \$200,000. Chairman Rocco noted that throughout the years the average cleanup cost had decreased dramatically. He said as of 2005, most sites are cleaned up under BUSTR's 2005 RBCA rule and there are some sites where the deductible represents more than 50% of the total cost of the cleanup. Chairman Rocco said the deductible amounts would be discussed at a future meeting of the Rules Committee.

New Business

Fee Collection/Refund Report.

Chairman Rocco called upon Madelin Esquivel to present the Fee Collection and Refund Report.

Ms. Esquivel said the staff continues to work diligently to meet their goal of paying out \$250,000 in fee refunds this program year. She said that during the first six months of PY 2011 there had been \$159,115 refunded, which is 64% of the goal. Ms. Esquivel stated that during PY 2010, a total of \$214,842 or 85% of the goal had been refunded. She said in an effort to meet the refund goal, each compliance staff member allots two days per month to focus only on processing refunds.

Ms. Esquivel said to date there had been 123 owners paid refunds during the first six months of this program year versus a total of 205 owners paid refunds in PY 2010. She said there are 3,427 accounts pending refunds in the database totaling \$1,622,990. In response to Mr. Hull's question regarding the amount of pending refunds, Ms. Esquivel explained that entering the refund information into the database is the first step of the refund process and takes only minutes to complete. She said, however, the file reconciliation can be complicated and time-consuming, which results in the actual payment being delayed.

Ms. Richmond added that currently there are several special projects ongoing, which include the focus on processing refunds. She said several years ago many owner files assumed to be completed and closed were boxed and stored off-site. Ms. Richmond said that throughout the following years, issues began to arise regarding some of these closed files. She said as a result of these issues, the files had been re-opened and are now being reconciled. Ms. Richmond said this reconciliation process has resulted in an increase in the number and amount of pending refunds.

In response to Mr. Stephenson's question regarding locating owners after many years of inactivity, Ms. Esquivel confirmed there are many owners that cannot be located and she stated that each spring edition of the UST PIPELINE contains a list of unclaimed funds. She stated the unclaimed funds list is also available on the Board's website at www.petroboard.org.

Responding to Mr. Hightower's request of the total amount of unclaimed funds, Ms. Esquivel stated she did not have the amount prepared for today's report, but would have the total amount of unclaimed funds in her report at the March Board meeting.

Ms. Esquivel said that during the first six months of PY 2011, there had been \$62,375 of pending refunds used to offset outstanding fund fees. She said that during PY 2010 there had been \$115,125 used to offset outstanding fees. Ms. Esquivel said in this program year, there had been \$196,759, including collection costs, collected by the Attorney General or Special Counsel.

Ms. Esquivel said 79 owners representing 418 accounts had been certified to the AG's office for collection thus far in PY 2011. She said each owner could have multiple accounts because each program year is an account. She said in PY 2010 there had been 240 owners representing 592 accounts certified to the AG's office. She said to date \$570,218 had been certified to the AG's office. She said all accounts that had not paid PY 2011 Fund fees would be certified to the AG's office this month.

Ms. Esquivel said 12 Orders Pursuant to Law are currently in appeal status; eight appeals are under review, two settlement agreements are pending, and two appeals are scheduled for hearings. She added there is one appeal regarding a Determination to Deny a Certificate of Coverage.

Ms. Esquivel stated in response to the recently enacted Ability to Pay Program, three applications had been received and are currently under review.

Mr. Hull stated it would be interesting to look back a little further to see if there is a trend. Ms. Esquivel stated she would add information regarding 2009.

Rules Committee

Chairman Rocco stated the Rules Committee would meet immediately following the March 21, 2012 Board meeting. He asked that all members of the Board contact Ms. Richmond if they had any input for the Rules Committee to be considered during the March committee meeting.

Old Business

Lease Update

Referencing a previous conversation regarding the office lease, Ms. Richmond stated that Ms. Kate Zurawski, Manager of the LeVeque Tower, informed her that the new owners had signed the lease and it should be received at the Board's office in the very near future.

Certificates of Coverage Ratification

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

Ms. Richmond said that behind Tabs 6 and 7 are listings of facilities that, since the November Board meeting, were issued or denied a program year 2010 or 2011 Certificate of Coverage.

Ms. Richmond explained that the process used to review the fee applications and issue or deny a Certificate of Coverage include a review for completeness to determine full payment has been received; financial responsibility for the deductible is demonstrated; and, the owner has certified with his signature that he is in compliance with the State Fire Marshal's rules. She said if these requirements have been met and if the tanks existed in previous years and a Certificate for the subject tanks was 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 discovered, notice is provided to the owner in accordance with the Board's rules. The owner is provided with 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. Throughout this process the Board's staff works with the owner to correct the fee statement record and/or refers the owner to BUSTR to correct the registration record.

Ms. Richmond asked the Board to ratify her actions with respect to the issuance of the 2010 Certificates of Coverage for the one owner on the first list behind Tab 6.

Mr. Hull moved to ratify the list of 2010 Certificates of Coverage that were granted. Ms. Hilvert seconded. A vote was taken and all of the members were in favor. The motion passed.

Ms. Richmond asked the Board to ratify her actions with respect to the denial of the 2010 Certificates of Coverage for the five owners of the nine facilities included on the list behind the Tab 6 blue divider page.

Mr. Hull moved to ratify the list of 2010 Certificates of Coverage that were denied. Ms. Hilvert seconded. A vote was taken and all of the members were in favor. The motion passed.

Ms. Richmond asked the Board to ratify her actions with respect to the issuance of the 2011 program year Certificates of Coverage for the 132 owners of 389 facilities included on the first list behind Tab 7.

Mr. Hull moved to ratify the list of 2011 Certificates of Coverage that were granted. Mr. Cable seconded. A vote was taken and all of the members were in favor. The motion passed.

Ms. Richmond asked the Board to ratify her actions with respect to the denial of the 2011 program year Certificates of Coverage for the 49 owners of the 57 facilities included on the list behind the Tab 7 blue divider page.

Mr. Hull moved to ratify the list of 2011 Certificates of Coverage that were denied. Mr. Geyer seconded. A vote was taken and all of the members were in favor. The motion passed.

Following a brief discussion regarding the process to issue or deny a Certificate of Coverage, Chairman Rocco requested that Ms. Esquivel report to the Board the number of Fee Statements mailed, the number of Certificates of Coverage issued, the number of Certificates of Coverage denied, and the number of Certificates of Coverage pending review.

Chairman Rocco stated there would be no Board Meeting in February.

Chairman Rocco reminded members that Financial Disclosure Statements for 2011 are to be filed with the Ethics Commission on or before April 15, 2012.

Executive Session

Chairman Rocco requested a motion to go into a three-part executive session pursuant to O.R.C. 121.22(G)(3) to discuss two matters of pending or imminent court action; and, pursuant to O.R.C. 121.22(G)(1) to discuss personnel issues. Mr. Hull so moved. Mr. Geyer seconded and a roll call vote followed. The following members voted in the affirmative: Messrs. Rocco, Hull, Epperson, Kuchta, Kmiec, Vedra, Stephenson, Geyer, Hightower, Cable and Ms. Hilvert. There were no nays and the motion passed.

Prior to moving into Executive Session, Messrs. Rocco and Epperson asked to be recused from the third session regarding pending or imminent court action.

Reconvene Meeting

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

Mr. Hull moved to authorize the Chairman to approve a pay increase of up to 6% for the Executive Director effective January 1, 2012, to reflect her performance since her initial probation period ended and to take into consideration she had not received a pay increase since her probation period ended. Mr. Stephenson seconded. A vote was taken and all voted in favor.

Confirm Next Meeting

Mr. Kmiec made a motion to adjourn the meeting. Mr. Geyer seconded. All were in favor. The next board meeting will be Wednesday, March 21, 2012, beginning at 10:00 a.m.