



# Petroleum Underground Storage Tank Release Compensation Board

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## MINUTES OF THE 167th MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD January 18, 2017

### BOARD MEMBERS IN ATTENDANCE

Jim Rocco  
John Hull  
Don Bryant  
Scott Fleming  
Tom Stephenson

### EX-OFFICIO MEMBERS IN ATTENDANCE

Bill Hills, representing Director Jacqueline Williams, Ohio Department of Commerce  
Chris Geyer, representing Director Craig Butler, Ohio Environmental Protection Agency  
J.D. Pisula, representing Josh Mandel, State Treasurer of Ohio

### OTHERS IN ATTENDANCE

Starr Richmond	Executive Director, PUSTRCB
Madelin Esquivel	Assistant Director, PUSTRCB
Don Leasor	Chief Fiscal Officer, PUSTRCB
Cindy Duann	Claims Supervisor, PUSTRCB
Jonathan Maneval	Administrative Coordinator, PUSTRCB
Cindy Knight	Accounts Receivable Analyst, PUSTRCB
Jennifer Croskey	Assistant Attorney General
Bill Kennedy	Kennedy Cottrell Richards, LLC
Jeff Bood	Spence Environmental Consulting, Inc.
Frank Reed	Frost Brown Todd LLC
Michelle Harrison	Frost Brown Todd LLC
Justin Wilde	BJAAM Environmental, Inc.
Sean Hetrick	BJAAM Environmental, Inc.

Minutes submitted by:

  
Jonathan Maneval  
Administrative Coordinator

**Call to Order:**

Chairman Rocco convened the one hundred sixty-seventh meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, January 18, 2017.

The following members were in attendance: Jim Rocco; John Hull; Don Bryant; Scott Fleming; Tom Stephenson; Bill Hills, representing Director Jacqueline Williams, Ohio Department of Commerce; Chris Geyer, representing Director Craig Butler, Ohio Environmental Protection Agency; and J.D. Pisula, representing Josh Mandel, State Treasurer of Ohio.

The following member was not present: Ron Falconi.

**Minutes:**

Chairman Rocco asked if there were any comments or questions regarding the minutes from the November 16, 2016 Board meeting, and there were none. Vice-Chairman Hull moved to approve the minutes. Mr. Geyer seconded. A vote was taken and all members voted in the affirmative. The minutes were approved as presented.

**BUSTR Report:**

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

Mr. Hills reported that intermittent employees had been hired as file room clerks, and a paralegal had also been hired.

Mr. Hills said another responsible party search program is underway and vendors have completed about 70 of the 184 cases being researched for this fiscal year. The program is used to identify underground storage tank (UST) owners and operators responsible for the investigation and cleanup of petroleum releases.

Mr. Hills reported that 11 grants had been awarded through the Abandoned Gas Station Cleanup Grant Program. The program is administered by the Ohio Development Services Agency, in partnership with the Ohio EPA and BUSTR, and has \$20 million available to local government entities to be used for the cleanup of abandoned gas station sites. He said that an additional eight grant applications are being reviewed, and three or four sites are being verified.

Mr. Hills stated that BUSTR personnel had completed all of their 2016 training requirements.

Mr. Hills said a meeting with stakeholders concerning the draft administrative rule amendments was held in December, and comments were being incorporated into the rules. He said once the proposed rule amendments are finalized, they would be submitted to the CSI (Common Sense Initiative) Office and then filed with JCARR (Joint Committee on Agency Rule Review) before the March filing deadline. He noted that interested parties would still have the opportunity to address concerns through the CSI process and at public hearings within the JCARR process.

Mr. Hills reported for the week ending January 7, 2017, there were 70 new inspections performed for the three-year inspection cycle ending June 30, 2019. He said that 14 NFAs (no further actions) were generated during this same time period for the grant cycle ending September 30, 2017.

Mr. Hills stated that, as of January 7, 2017, there were 21,556 registered USTs and 3,637 owners of 7,287 registered facilities.

### **Financial Reports:**

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

### ***Audit Report***

Mr. Leasor introduced Bill Kennedy, a representative from Kennedy Cottrell Richards, to present the draft copy of the financial statements and supplementary financial information for the year ending June 30, 2016, which had been distributed to each member.

Mr. Kennedy explained that the audit is in its final review stages and would be filed with the Auditor of State prior to the January 31, 2017 submission deadline. He said that, as in years past, his firm will issue two reports. He said the first report is their opinion on the Board's financial statements and whether they are fairly stated in accordance with generally accepted accounting principles. He said unless something changes during their final review, they anticipate issuing a clean or unmodified opinion on the financial statements. He said their second report concerns their testing of internal controls over financial reporting and material compliance that could impact the financial statements. He expressed again that they expect to issue a clean report, as there were no issues with internal controls, material weaknesses or significant deficiencies to report. He commented that, if something would change before the reports are issued, it would be communicated to the Board.

Vice-Chairman Hull asked if the Deferred Outflows of Resources was a new reporting section. Mr. Leasor explained that the deferred outflows concerns GASB (Governmental Accounting Standards Board) Statement No. 68, which was implemented last year and requires the financial reporting of net pension liability as calculated by the Ohio Public Employees Retirement System. Vice-Chairman Hull asked why it had increased from about \$84,000 in 2015 to over \$368,000 in 2016. Mr. Pisula explained that the discount rate used to estimate future benefit liabilities had been lowered.

Mr. Leasor requested that each member take time to review the draft financial statements, and to contact him by January 25, 2017, if they had questions or comments.

### ***October and November Financials***

Mr. Leasor said the October and November financials were emailed to each member. He asked if there were any questions or concerns regarding these reports, and there were none.

Mr. Leasor reported, as of January 17, 2017, the unobligated account balance is \$25.9 million. He said this amount includes \$11.9 million in STAR Ohio and the custodial account, and \$14 million invested in U.S. treasuries and U.S. agency callable bonds. He said the obligated account balance for the payment of claims is \$4.9 million.

Mr. Leasor said that, as of November 30, 2016, expenses should be around 41.6% of the amount budgeted for the fiscal year. He said the claims expense for the month of November was about \$306,000, and to date, approximately \$4.1 million had been paid for claims for fiscal year 2017.

Mr. Leasor stated that the operating expenses for the month of November were approximately \$144,000. He pointed out that, as of November 30, 2016, postage expense was 68% of the amount budgeted. He said this was due to postage fees for the final quarter of fiscal year 2016 being paid in July of fiscal year 2017. He said these charges include fees for the annual fee statement mailing, which is sent by certified mail.

Mr. Leasor said all other expenses are at or below where they should be at this time in the fiscal 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, as of December 31, 2016, refunds totaling \$8,533 had been paid to 11 owners for the 2016 program year, which began July 1, 2016. She reported the amount of refunds pending totals \$1.4 million. She said a total of \$31,492 was used to offset prior years' outstanding fees.

Ms. Esquivel said, as of December 31, 2016, a total of \$122,288 had been collected by the Attorney General's Office and Special Counsel, and collection costs were \$18,063. She pointed out that no collection fees had been billed since the November meeting, and explained that this was due to the rollout of a new database at the Attorney General's Office.

Ms. Esquivel said, as of December 31, 2016, 51 accounts totaling \$129,035 had been certified to the Attorney General's Office for collection. She said the certification of unpaid 2016 program year's fees will occur at the end of the month.

Ms. Esquivel said two Orders Pursuant to Law are under appeal. She said one hearing is scheduled and one appeal is in settlement negotiation. She noted that two appeals had been closed since the November meeting. She said one Determination to Deny a Certificate of Coverage was under appeal and information to support the appeal is expected to be provided.

Ms. Esquivel reported that three 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 Applications for Certificates of Coverage were mailed to 3,418 owners for program year 2016. She said 2,908 Certificates of Coverage had been issued as of December 31, 2016. She said there are 211 Applications for Certificates of Coverage currently being processed, 26 unresolved Pending Denials and 35 unresolved Determinations to Deny a Certificate of Coverage.

Ms. Esquivel stated that there are 50 uncashed refund checks that total \$38,897. She said there is \$33,665 in refunds pending for 27 owners from whom more information has been requested.

### **Claims Reports:**

Chairman Rocco called upon Cindy Duann, Claims Supervisor, to present the claims reports.

Ms. Duann said the staff is currently reviewing and settling claims received in the months of August and September.

Ms. Duann reported, as of January 17, 2017, there were 13 claim settlement determinations under appeal. She said, since the November meeting, seven claim settlement appeals had been resolved, and two new objections to claim settlement determinations had been received. She said a hearing is scheduled for one appeal and responses had been issued concerning seven of the appeals for which additional information had been provided by the appellants. She said notifications from these appellants about how they wish to proceed are expected.

Ms. Duann reported that, in the month of December, 55 claim applications were received and 70 claims were settled. She said an additional 21 below deductible claims submitted for sites that had been issued an NFA were closed. She pointed out that, during the last six months, an average of 54 claims per month were received, and the staff settled an average of 64 claims per month.

Ms. Duann reported that the average claim payout ratio was about 77.4% of the net value, and pointed out that this is slightly higher than the previous years' average of 75%. She said the total claim settlement offer was \$3.5 million for this program year, and the average per claim payout was slightly higher than \$9,700.

Ms. Duann said, in the month of December, only one eligibility application was received. She said, although no eligibility determinations were issued in December, six determinations were issued on January 13, 2017, and she anticipates issuing more eligibility determinations by the end of the month.

Ms. Duann added, during the last six months, a total of 27 eligibility applications were received and 29 eligibility determinations were issued. She said, of the 29 eligibility determinations issued, 16 were approved and 13 were denied. She said, as of January 3, 2017, a total of 26 eligibility applications were pending review, and seven determinations to deny eligibility were under appeal. She said information has been received for two appeals and it is under review. She said information to support the remaining five appeals is expected. She noted that two of the objections had been filed since the November meeting.

Ms. Duann stated, in the last six months, a total of 64 requests for cost pre-approval had been received, and 68 cost pre-approval notifications were issued. She said there are 34 cost pre-approval requests currently pending review.

### **Unfinished Business:**

#### ***Office Lease***

Chairman Rocco called upon Starr Richmond, Executive Director, to discuss the office lease.

Ms. Richmond said the Board's current lease agreement expires in June 2017 and the LeVeque's owners have proposed to increase the rental rate from \$13.67 per square foot to \$17.50 per square foot.

She said when parking costs are included, the rate is \$21.38 per square foot. She said, as authorized at the previous meeting, an agreement with a real estate broker had been executed in order to explore office spaces that were available outside of the downtown area. She said the broker had shown them five properties. However, one property was immediately found to be unsuitable to the Board's needs.

Ms. Richmond directed members to a summary of the properties that had been distributed and explained that the information presented was obtained from proposals solicited from the four other locations. She explained that the two most suitable options were buildings located at 4151 Executive Parkway in Westerville and 355 East Campus View Boulevard in Columbus. She said architects had put together usable floor plans for both locations.

Ms. Richmond also presented a cost analysis comparison between the properties. She pointed out that the moving expenses are estimated to be \$49,750, which includes money for the replacement of modular furniture, the physical move, the replacement of stationary and the mailing of notifications to tank owners and other stakeholders concerning the move. She pointed out that courier costs were also estimated, and were lower for the Executive Parkway location due to its location being within walking distance of a Huntington bank for deposits.

Vice-Chairman Hull asked whether the square footage would be the same as the current space. Ms. Richmond noted that the office space in the LeVeque is about 8,900 square feet, and both of the locations under consideration are smaller, but the architects had designed floor plans that do work. Mr. Fleming asked whether the buildout costs were included in the comparison, and Ms. Richmond explained that the buildout costs were not included as they are expected to be paid by the landlord. Vice-Chairman Hull asked if the proposed rates were based on a six-year lease, and Ms. Richmond explained that the lease would be for two years, with two two-year renewals. She noted that if the Board were to not renew the lease, there would be penalties equal to the unamortized buildout costs.

Chairman Rocco said it makes sense to relocate the office, given the rising rental rates at the LeVeque and the uncertainty surrounding the conversion of the building into residential and hotel use, along with the other inconveniences such as parking. Following a brief discussion Vice-Chairman Hull moved to authorize the Chairman and the Executive Director to enter into negotiations for the 4151 Executive Parkway and the 355 East Campusview Boulevard properties, and based on those negotiations to select a location, and execute a lease. Mr. Stephenson seconded. A vote was taken and all members voted in the affirmative. The motion passed.

***Subrogation – The Hartley Company vs. Jones & Frank***  
**Claim # 4882-0013/07/10/14, Facility – Troy Gulf Station**

Chairman Rocco called upon Jennifer Croskey, Assistant Attorney General, and Frank Reed from the law firm Frost Brown Todd LLC to discuss a subrogation claim.

Ms. Croskey briefly reminded members of the discussion that was held at the previous meeting concerning the Hartley Company and its case against Jones & Frank. She explained that, since the November meeting, the federal judge in the case had concluded the Board was a necessary party in the case, and joined the Board as an involuntary plaintiff in the litigation. She introduced Frank Reed, the attorney representing the Hartley Company, and said Mr. Reed had asked to briefly address the Board.

Ms. Croskey cautioned that, because the Board is now a party in the case, any discussion of the matter should be held until the Board adjourned into executive session later in the meeting.

Mr. Reed provided a brief summary of the events that occurred at the Hartley Company's gas station located in Troy, Ohio. He explained that a petroleum release occurred following a faulty equipment repair performed by a UST maintenance company known as Jones & Frank after its technician failed to properly wrench-tighten a swift check valve. He said because the swift check valve was only hand tightened, approximately 8,800 gallons of fuel leaked from the tank system and significant corrective actions estimated to cost about \$1.3 million are necessary. He expressed that the Hartley Company believes Jones & Frank and its insurer are 100% liable for the cleanup of the release and filed a lawsuit in order to recover the costs for the cleanup. He said the Hartley Company has also begun to submit claims to the Board, and explained that if the Hartley Company receives money through its lawsuit, any cleanup costs the Fund has reimbursed will be repaid.

Chairman Rocco asked if there were any questions for Mr. Reed, and there were none. He thanked Mr. Reed for his presentation and said Ms. Croskey would be discussing the case further with the Board during the executive session.

#### **New Business:**

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

Chairman Rocco called upon Ms. Richmond to present the hardship applications.

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

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

##### **Claim # 18752-0001/06/11/08, Owner – Charles Hanrahan**

Ms. Richmond said that Charles Hanrahan is the responsible person for a 2008 release that occurred at 3718 Lawrenceville Drive in Springfield, Ohio. She said this is his seventh request for hardship status.

Ms. Richmond said, to date, the Fund has reimbursed about \$536,000 to cleanup this release, and one claim with a face value of \$20,000 is pending review. She noted that, based on the information provided in the hardship application, the estimated cost of corrective actions for the next 12 months is \$100,000.

Ms. Richmond said that Mr. Hanrahan currently leases the facility to an automotive repair shop for \$600 per month. She said his annual household income is \$67,000, which exceeds the household living expenses and debt payments by \$16,700 per year. She noted his cash on-hand and IRA investments are approximately \$91,000 and \$75,300 respectively, which was an increase from previous years due to the sale of a property in 2015.

Ms. Richmond said the U.S. EPA financial capacity test, which is based on cash flows anticipated over a three-year period, estimates that he can afford additional cleanup costs of \$22,000. She recommended, given the anticipated costs in the next year, as well as the likelihood of continued corrective action costs in subsequent years, that the Board approve the application and grant hardship status to Mr. Hanrahan. Vice-Chairman Hull so moved and Mr. Geyer seconded. A vote was taken and all members voted in the affirmative. The motion passed.

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

Ms. Richmond said Amanda Carryout Inc. is the responsible party for a 2008 release that occurred at 145 East Main Street in Amanda, Ohio. She explained that, as the owner, Mr. Allen Frank is requesting the Board grant hardship status to Amanda Carryout Inc., and this is the seventh request for hardship status.

Ms. Richmond said, to date, the Fund has reimbursed \$252,000 for corrective actions for this release, and there is one claim totaling \$20,100 for which payment is pending. Additionally, the estimated cost of corrective action work expected to take place over the next 12 months is \$71,000.

Ms. Richmond said, based on Amanda Carryout's income tax records, which showed the business reported income of \$46,400 for calendar year 2015, the U.S. EPA ABEL model for corporations estimates a 69% probability that Amanda Carryout can afford \$71,000 in corrective action costs. However, the U.S. EPA typically employs the 70% probability level for determining the ability to pay. In addition, the probability levels are based upon projected cash flows for the next three years. Given the costs over the next year are estimated at \$71,000 and it is anticipated that additional costs will be incurred in the following two years, Amanda Carryout does not have sufficient cash flow to carry the projected costs of corrective action. Ms. Richmond recommended that the Board approve the application and grant hardship status to Amanda Carryout, Inc. Vice-Chairman Hull so moved and Mr. Hills seconded. A vote was taken and all members voted in the affirmative. The motion passed.

**Certificates of Coverage – Ratifications:**

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

Ms. Richmond said the lists behind Tabs 8 and 9 are listings of facilities that, since the November Board meeting, had been issued or denied a program year 2015 or 2016 Certificate of Coverage.

Ms. Richmond said the process used to review the fee applications and issue or deny a Certificate of Coverage includes a review for completeness to determine full payment was received; financial responsibility for the deductible has been demonstrated; and the owner has certified with his signature that he is in compliance with the State Fire Marshal's rules for the operation and maintenance of



petroleum underground storage tanks. She said, if these requirements are met and if the tanks existed in previous years, a Certificate for the subject tanks has been issued to the owner in at least one of the prior two years, then a Certificate of Coverage is issued.

Ms. Richmond explained that if deficiencies or compliance issues are identified, notice is provided to the owner in accordance with the Board's rules. The owner is provided 30 days to respond to the notice with information to correct the deficiency or compliance issue. If correcting information is not received within this time, a determination denying the Certificate of Coverage is issued to the owner.

She said the Board's rules and the Revised Code make provisions for an appeal of the determination. Ms. Richmond said that, throughout this process, the Board's staff works with the owner to correct the fee statement record and, if necessary, refers the owner to BUSTR to correct the registration record.

Ms. Richmond requested the Board ratify her actions with respect to the issuance of the 2015 program year Certificates of Coverage for the two facilities included on the list behind Tab 8.

Vice-Chairman Hull moved to ratify the issuance of the 2015 Certificates of Coverage for the facilities listed. Mr. Bryant seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Richmond requested the Board ratify her actions with respect to the denial of the 2015 program year Certificates of Coverage for the two facilities included on the list behind the Tab 8 green divider page.

Vice-Chairman Hull moved to ratify the denial of the 2015 Certificates of Coverage that were listed. Mr. Fleming seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Richmond requested the Board ratify her actions with respect to the issuance of the 2016 program year Certificates of Coverage for the 977 facilities included on the list behind Tab 9.

Vice-Chairman Hull moved to ratify the issuance of the 2016 Certificates of Coverage for the facilities listed. Mr. Geyer seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Richmond requested the Board ratify her actions with respect to the denial of the 2016 program year Certificates of Coverage for the 41 facilities included on the list behind the Tab 9 green divider page.

Vice-Chairman Hull moved to ratify the denial of the 2016 Certificates of Coverage that were listed. Mr. Bryant seconded. A vote was taken and all members were in favor. The motion passed.

### **Executive Session:**

Chairman Rocco 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. Vice-Chairman Hull so moved. Mr. Bryant seconded. Chairman Rocco called for a roll call. The following members voted in the affirmative: Messrs. Bryant, Fleming, Geyer, Hills, Hull, Pisula, Stephenson and Rocco. There were no nays. The motion passed.

During the executive session, Chairman Rocco and Mr. Fleming requested to be recused from a portion of the executive session, and Chairman Rocco turned the meeting over to Vice-Chairman Hull.

***Reconvene Meeting***

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

**Confirm Next Meeting and Adjourn:**

Chairman Rocco said that the next Board meeting will be held on Wednesday, March 15, 2017, at 10:00 a.m.

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