



Petroleum Underground Storage Tank Release Compensation Board

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**MINUTES OF THE 172nd MEETING OF THE
PETROLEUM UNDERGROUND STORAGE TANK
RELEASE COMPENSATION BOARD
January 10, 2018**

BOARD MEMBERS IN ATTENDANCE

Jim Rocco
John Hull
Don Bryant
Ron Falconi
Scott Fleming
Tom Stephenson

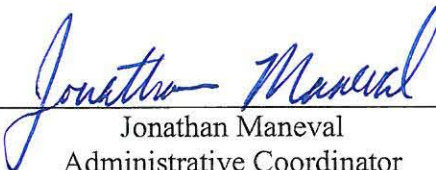
EX-OFFICIO MEMBERS IN ATTENDANCE

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
Val Gatallin	Environmental Claims Analyst, PUSTRCB
Jennifer Croskey	Assistant Attorney General
Howard Silver	Hearing Officer
Dan Adams	ATC Group Services LLC
Doug Darrah	ATC Group Services LLC
Sean Hetrick	BJAAM Environmental, Inc.
Matthew and Alicia Miller	Former UST Owners
Jacqueline Caldwell	Krugliak, Wilkins, Griffiths & Dougherty, Co. L.P.A.
Jeralyne Offenberger	Par Mar Oil Co.

Minutes submitted by:


Jonathan Maneval
Administrative Coordinator

Call to Order:

Chairman Rocco convened the one hundred seventy-second meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, January 10, 2018.

The following members were in attendance: Jim Rocco; John Hull; Don Bryant; Ron Falconi; 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.

Minutes:

Chairman Rocco asked if there were any comments or questions regarding the minutes from the November 29, 2017 Board meeting and there were none. Vice-Chairman Hull moved to approve the minutes. Mayor Falconi 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 an intermittent employee is being used to assist in the file room until the clerk position can be filled with a permanent employee. He stated that 33 grants totaling over \$5.1 million had been awarded through the Abandoned Gas Station Cleanup Grant Program and that eight grant applications are currently being reviewed. The program is administered by the Ohio Development Services Agency, in partnership with the Ohio Environmental Protection Agency and BUSTR, and has \$20 million available to local government entities to cleanup abandoned gas station sites.

Mr. Hills reported that a certified installer course will be held at the State Fire Marshal Academy the week of February 5, 2018, and a certified inspector course will be offered the week of February 22, 2018. He explained that these courses were designed specifically for cities with delegation of authority, which allows for them to perform their own UST system inspections.

Mr. Hills stated that a proposed rule amendment to increase the annual registration fee from \$50 per tank to \$100 per tank was submitted to the Common Sense Initiative (CSI) Office on December 20, 2017, and the comment period ended on January 4, 2018. He said, once the CSI Office issues its recommendation, the intent is to proceed with the filing of the rule with JCARR (Joint Committee on Agency Rule Review) on January 12, 2018. He explained that the additional monies generated by the fee increase will support BUSTR's inspection program. He added that both he and the Fire Marshal appreciated the letter in support of the fee increase that was submitted to the CSI Office by the Board's Executive Director, Starr Richmond.

Mr. Hills reported for the week ending December 30, 2017, there were 21 new inspections performed for a total of 4,719 inspections for the three-year inspection cycle. He said that one NFA (no further action) was generated during the week ending December 30, 2017, for a total of 111 NFAs for the grant cycle ending September 30, 2018.

Mr. Hills stated that as of December 30, 2017, there were 21,254 registered underground storage tanks (USTs) and 3,605 owners of 7,200 registered facilities. He said that as of January 9, 2018, just over 30,000 NFAs had been issued throughout the history of the BUSTR program.

Financial Reports:

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

Audit Update

Mr. Leasor stated that Kennedy Cottrell Richards had submitted the audited financial statements for the year ending June 30, 2017, to the Auditor of State prior to the December 31 submission deadline and thanked the members of the Finance Committee for their review and comments. He explained that the Auditor of State will perform a desk review of the financial statements and then the reports will be released to the public. Chairman Rocco noted that there were no findings or recommendations to report as a result of the audit, and the auditing firm issued a clean or unmodified opinion as had been discussed at the November Board meeting.

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 9, 2018, the unobligated account balance is \$26.9 million. He said this amount includes \$10.9 million in STAR Ohio (State Treasury Asset Reserve of Ohio) and the custodial account, and \$16 million invested in U.S. treasuries and U.S. agency callable bonds. He noted that an additional \$2 million had been invested in U.S. agency callable bonds as approved at the previous Board meeting. Chairman Rocco asked what was the current rate and Mr. Pisula replied that it was 2.31%.

Mr. Leasor said at the June Board meeting, \$9 million was obligated for the payment of claims and the obligated account balance as of January 9, 2018, is \$5.7 million.

Mr. Leasor said that as of November 30, 2017, 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 \$771,000, and to date, approximately \$3.3 million had been paid for claims for fiscal year 2018.

Mr. Leasor reported that as of November 30, 2017, approximately 98% of the budgeted revenues, net of refunds, had been collected. He said information on refunds and fee collections would be presented with the compliance and fee assessment report.

Mr. Leasor reported that operating expenses for the month of November were approximately \$168,000. He said the expenses for temporary services were 87.4% of the amount budgeted and explained that this was due to the use of two employees to fill vacant positions. He said currently, a temporary employee is being used to fill the office assistant position, and the other position has been posted to fill with a permanent employee. He pointed out that employee expenses were 125.4% of the amount budgeted. He explained that these expenses were for staff parking passes at the LeVeque Tower office location and the overage resulted from the move being delayed.

Mr. Leasor stated that telephone expenses are at 118.2% of the budgeted amount and explained that cost estimate for the installation and setup of the internet connection and VoIP services was significantly below the actual costs.

Mr. Leasor said postage expenses were 55.4% of the amount budgeted. He said this was due to postage fees for the final quarter of fiscal year 2017 being paid in August of fiscal year 2018. He said these charges include fees for the annual fee statement mailing, which is sent by certified mail.

Mr. Leasor said overall 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, 2017, refunds totaling \$20,168 have been paid out to 20 owners for the 2017 program year. She said as of December 31, 2017, there are 2,862 pending refunds totaling \$1,433,984 million. She said that \$5,095 in refunds was used to offset prior years' outstanding fees.

Ms. Esquivel reported as of December 31, 2017, the fees collected by the Attorney General's Office and Special Counsel less collection costs totaled \$59,628. She said no accounts have been certified to the Attorney General's Office for collection since July 1, 2017. She said the next certification will occur in the end of January and will include the 2017 program year's fees as well as any prior years' fees that are outstanding and have not yet been certified.

Ms. Esquivel said that no Orders Pursuant to Law are under appeal and one Determination to Deny a Certificate of Coverage is currently under appeal for which a hearing was held on August 3, 2017.

Ms. Esquivel stated that two 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 January 2, 2018, a total of 2,835 Certificates of Coverage have been issued thus far for program year 2017. She said there are 260 Applications for Certificates of Coverage currently in process. She said that as of January 2, 2018, a total of 55 notifications of Pending Denial and eight Determinations to Deny a Certificate of Coverage have been issued.

Ms. Esquivel stated that there are 49 uncashed refund checks, totaling \$38,346. She said there are five owners with pending refunds totaling \$7,090 to whom letters have been sent notifying them that more information is needed before their refunds may be issued. She said there are 27 owners with pending refunds totaling \$31,245 for which information had been requested, but no responses have been received.

Claims Reports:

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

Ms. Duann said in 2018 the Fund reached a new milestone of reimbursing over \$250 million in claim payments in the past 27 years. She said this money has helped to clean up over 3,100 petroleum releases of which about 79.4% were granted NFA status by BUSTR. She said the average cleanup cost for each release that received an NFA was about \$132,000 and the average payout per release was just under \$72,000.

Ms. Duann reported that as of January 2, 2018, a total of 1,505 claims with a total face value above the deductible amount were pending review. She noted that claims received in the month of September 2017 are currently being reviewed by the staff. She noted that as of January 2, 2018, a total of 21 claim settlement determinations were under appeal.

Ms. Duann reported that, during the previous six months, a total of 258 claims were received and in these months, the staff settled or closed a total of 310 claims. She stated that the total claim settlement offer for this six-month period was \$3.46 million and the average per-claim payout was about \$12,300. She pointed out that this was slightly higher than the previous years' averages. She said that the average claim payout ratio is also higher than previous years' averages at about 79.4% and explained that this means that more of the claimed costs are being allowed and the disallowed costs have decreased.

Ms. Duann said that, during the months of July through December, 35 eligibility applications were received and 41 eligibility determinations were issued. She said of the 41 determinations, 19 were approved and 22 were denied, including 16 being denied for no release being demonstrated or no corrective action work being required by BUSTR. She said because only 19 eligibility applications were approved in program year 2017, the number of claim submissions received in the upcoming year may decrease. She said currently, 27 eligibility applications are pending review and eight determinations are under appeal.

Ms. Duann reported that 57 pre-approval requests had been received in the months of July through December and 60 cost pre-approval notifications were issued. She said with the exception of annual Remedial Action Plans and Monitoring or Calibration Plan the number of cost pre-approval requests has been consistently decreasing over the past few years.

Unfinished Business:

2018 Deductible Amounts

Chairman Rocco reminded members that at the November Board meeting, the Board had discussed the annual per-tank fee for the upcoming program year and elected to decrease the annual fee from \$400 to \$350 per tank. He noted that the Board did not take formal action concerning the deductible amounts for the upcoming year as required by the statute and explained that the Finance Committee's recommendation was to make no changes to the deductibles. He then requested a motion to adopt the recommendation of the Finance Committee to make no changes to the deductible amounts for program year 2018. Vice-Chairman Hull so moved. Mr. Stephenson seconded. A vote was taken and all members voted in the affirmative. The motion passed.

New Business:

Administrative Appeal – Report & Recommendation

Chairman Rocco called upon Howard Silver, the Board's Hearing Officer, to present the Report and Recommendation concerning the Determination to Deny a Certificate of Coverage and the Eligibility Determination issued to Matthew and Alicia Miller.

**Facility Number: 23812-0001, Matthew and Alicia Miller
522 Dover Road, Sugarcreek**

Mr. Silver said the cases before the Board concerned Matthew and Alicia Miller who purchased a former Sunoco gas station in Sugarcreek, Ohio. He said the Millers had purchased the property with the intention of opening a winery and had no interest in operating it as a gasoline station. He explained that the sale of the property occurred on February 8, 2016, and there were three 6,000-gallon gasoline underground storage tanks located at the site at the time of transfer.

Mr. Silver said that following the sale, the Millers sent to the Board a Transfer of Ownership Form along with a \$500 check as payment of the transfer fee. He explained that after these materials were received, on February 23, 2016, the Board's Executive Director sent the Millers a Notice of Pending Denial that explained that in order for a Certificate of Coverage to be granted, a completed Application for Certificate of Coverage must also be received by the Board. He noted that this application includes a certification that the tanks are in compliance with applicable State Fire Marshal rules and a statement of financial responsibility for the Fund deductible amount, which are required by the Board's rules. He stated that the letter informed the Millers that the completed application was to be provided within 30 days from the mailing of the notice or the Certificate would be denied. He said the requested application was not received and after the 30 days passed, on April 5, 2016, the Board's Executive Director issued another letter stating that since no response had been received, the Certificate of Coverage was denied. He said that on April 27, 2016, the Millers filed an appeal of the denial of the Certificate of Coverage. He noted that this was a summary of the first case concerning the denial of the Certificate of Coverage, and the timely and appropriate appeal by the Millers.

Mr. Silver said, on June 30, 2016, the Millers filed an Application for Financial Assurance Fund Eligibility in order to be determined eligible for the reimbursement of corrective action costs from the Fund and on May 5, 2017, the Executive Director sent a letter to the Millers denying their request for eligibility under the Fund. He explained that the primary reason that eligibility was denied, was because the Millers did not have a Certificate of Coverage. He said that decision was timely appealed by the Millers on June 1, 2017.

Mr. Silver stated that an adjudication hearing was conducted with evidence submitted into the record and testimony from witnesses, and thereafter he issued his Report and Recommendation. He said that he considers his role as the hearing examiner for the Board to be an interpreter of administrative rules and laws and the application of that authority to the facts that have been determined at the hearing. He said that in making that application in this case, the facts that were determined, and the authority both of the Ohio Revised Code and the rules adopted by the Board in the Ohio Administrative Code, he found there to be no basis for overturning the Executive Director's determination to deny the Certificate

of Coverage. He added that he does not have the authority to change the law, change the rule, or ignore any part of it. He stated that after consideration and analysis of the facts, there was no legitimate basis to issue the Certificate of Coverage, and therefore there was no basis to grant eligibility under the Financial Assurance Fund.

Mayor Falconi asked whether the Millers had offered any explanation as to why they did not submit the application as requested. Mr. Silver said that his impression from the testimony was that they had every intention of complying and thought they had already complied with the request, and their argument was that they made a good faith effort. Mr. Geyer asked whether the prior owner of the property possessed a Certificate of Coverage until the date of the sale, and Mr. Silver confirmed that a Certificate had been issued to the previous owner, Mr. Hostetler. Mr. Silver noted that the evidence in the record showed there was an attempt in the eligibility application to identify Mr. Hostetler as the operator of the UST system, and establish eligibility under his Certificate of Coverage, but that was not to be found feasible. Mr. Hills asked why it was not feasible. Mr. Silver explained that the property was sold after Mr. Hostetler had become very ill and he was not in fact a day-to-day operator of the tanks.

Mr. Hills said there are indications in the report that the Millers attempted to transfer the Fund coverage after they bought the facility. He commented that since the tanks have been removed and contamination was found at the site, he is concerned that there is no incentive to clean it up if there is no compensation from the Fund. Mr. Silver noted that the matter could have been resolved to everybody's satisfaction and in compliance with the law as written, but, as he stated in the report, that administrative process was not accomplished. He added that the notice was properly provided, and the steps that were needed to issue the Certificate were delineated and described in detail, and the deadline was also provided.

Mr. Geyer said that he agreed with Howard's interpretation of the law and thanked him. He said it strikes him as unlikely that the release occurred between February 8, 2016, when the Millers purchased the property and when the release was found on April 5, 2016. He asked if engineers looking at the site were to offer a valid opinion that the release occurred prior to the transfer of the property, it could be covered under Mr. Hostetler's Certificate of Coverage. Mr. Fleming then asked whether the tanks were empty and Mr. Silver said the tanks were empty prior to their removal and an invoice shows that the last delivery of gasoline occurred sometime in August of 2015. Mr. Silver stated that his understanding of the law is that to be determined eligible under the Fund, a valid Certificate of Coverage must exist and the tanks must be in compliance at the time the release is suspected. Chairman Rocco said if the release occurred prior to the transfer of the property then there was a responsibility of that prior owner to report the release, and there would be a question of whether the tanks were in compliance at that time.

Chairman Rocco stated that the primary legal question at issue is whether the transfer of the Certificate of Coverage was in accordance with the Board's rules, and noted there have been similar cases in the past resulting from administrative errors where an applicant has failed to submit the application within the required timeframes, or an applicant has failed to respond to similar letters that requested additional information. He said the Board will have to decide whether to uphold the recommendation.

Chairman Rocco stated that objections to the Report and Recommendation had been filed by the Millers' counsel and asked the Board's Assistant Attorney General, Jennifer Croskey, to explain the process to the Board. Ms. Croskey stated that the Ohio Administrative Procedures Act allows for objections to the Report and Recommendation to be filed, however, the Administrative Procedures Act does not specifically provide for a response to those objections to be filed. She then directed the Board members to a motion she had filed seeking permission to respond to the objections filed by the Millers. She noted this motion was filed *Instantly*, a Latin term meaning automatically. She pointed out that if the Board grants permission to file the response, a proposed entry for the Chairman was provided in the notebooks along with the memorandum in opposition to the objections. She said the response simply addresses what was found to be at issue in terms of the objections. Chairman Rocco pointed out that the motion, the proposed entry, and the memorandum were behind the Tab 6 green divider page in the Board members' notebooks. He then requested a motion to approve the Director's motion for leave to respond to the objections filed by the Millers. Vice-Chairman Hull so moved and Mr. Hills seconded. Chairman Rocco asked if there were any questions, and there were none. A vote was taken and all were in favor. The motion passed.

Chairman Rocco invited the Millers' counsel, Jacqueline Caldwell, to address the Board. Ms. Caldwell restated the circumstances under which the Millers acquired the fueling station and explained in detail the actions the Millers took before and after the sale of the property to transfer the Certificate of Coverage. She reiterated that the Millers submitted the completed Transfer of Ownership Form along with the \$500 transfer fee payment to the Board. She said they also obtained a letter from their bank with the intention of demonstrating financial responsibility for the deductible amount, but had mailed that letter to BUSTR as they were unaware that BUSTR was a different agency from the Board. She said by signing the Transfer of Ownership Form the Millers believed they had certified that the tanks were in compliance with the State Fire Marshal's rules. She said that in conjunction with taking these steps, the Millers worked with BUSTR to obtain removal permits and pay the necessary filing fees to transfer ownership with that agency. She said the Millers truly believed they had taken all steps necessary to transfer the Certificate of Coverage and be in compliance with the law. She noted that in addition to the Fund coverage, the Millers also attempted to obtain an insurance policy and part of that application included a certification that the tanks are in compliance with BUSTR regulations. She noted this application was sent to the potential insurance company and not sent to the Fund. She said she believes it shows that the Millers took every effort to try to be compliant with both BUSTR and the Fund.

Ms. Caldwell stated that while the Millers received the February 23, 2016 letter, they unfortunately did not read it carefully, and believed it to be a request for information that was previously provided. She commented that the Millers are from a small town in Ohio and are not sophisticated in the requirements and regulations that go along with tank systems. She said that in his testimony, Mr. Miller stated he believed he had sent the necessary information and thought perhaps it had not yet been received by the Board. She said he did not read the application attached to the letter. Chairman Rocco clarified that the letter specifically requested two things, the certification that the tanks are in compliance with the State Fire Marshal's rules and the statement of financial responsibility for the Fund deductible. He then asked Executive Director Richmond if the requested information had been received within the 30-day period if she would have processed the issuance of the Certificate. Ms. Richmond explained that if the

completed Application for Certificate of Coverage had been received within that 30-day period then their Certificate would have been issued and been effective the date the transfer fee payment was received. She noted that the application includes the certification of compliance with the State Fire Marshal's rules and a statement of financial responsibility.

Chairman Rocco asked whether the tanks were in fact in compliance with BUSTR's rules at the time of their removal. Ms. Caldwell stated that to everybody's knowledge the tanks were in compliance. She said because the Millers did not understand the importance of the date the tanks were last used, they never asked for that information from Mr. Hostetler before he died and the only information available was a product delivery invoice showing that fuel was last delivered in August of 2015. Chairman Rocco pointed out that BUSTR's rules require the tank owner to acquire certain permits and to take certain actions when tank systems are out of service beyond 90 days and beyond a one-year period. Mr. Stephenson commented that BUSTR's rules also require tank systems to be monitored monthly for leaks and for those records to be maintained for two years, and if it could not be determined when the tanks were last used, then the tanks could not have been in compliance. Ms. Caldwell responded saying that perhaps those records do exist, and the burden of proof is on the Board to prove whether or not they exist.

Vice-Chairman Hull asked if a Certificate of Coverage issued to a previous owner remains in effect until it is rescinded or it is transferred regardless of who owns the property. Ms. Richmond stated that the original owner's Certificate was no longer in effect after the sale of the tanks. She added that when the eligibility application was received by the Board, both Mr. Hostetler and the Millers had signed it and she issued two eligibility determinations; one to the Millers and one to Mr. Hostetler. She noted that the Millers appealed their determination, but Mr. Hostetler did not. She explained that eligibility was denied to Mr. Hostetler because he was not a responsible person since he was neither the owner nor the operator of the USTs at the time the release was discovered.

Ms. Caldwell said that in her objection she presented an Ohio Supreme Court decision which was not included in the hearing and asked the Board to review the decision and to apply that standard in reviewing the Millers' case. Chairman Rocco said he recognized that objections were filed, but the Board was not rehearing the case. He said the Board would only be addressing the question of whether the administrative process in the Board's rules for transferring a Certificate of Coverage was followed, and whether the Executive Director's decision to deny the Certificate was valid based on the Board's rules. He said when it is clear the information has not been properly submitted, the Board has always taken an action to uphold its rules.

Following some further presentation of the Millers' objections by Ms. Caldwell, Chairman Rocco called upon Ms. Croskey to comment on the appeals and the Millers' objections. Ms. Croskey stated that the case law Ms. Caldwell referenced in the objection was fundamentally different than the Millers' case. She pointed out that in the Millers' case, no communication or letter was sent to the Board after the Director requested the completed application, but in the Supreme Court case discussed by Ms. Caldwell, a correspondence was sent from the Board of Elections to the Commissioners, although it did not include the statutorily required certification. She said the Millers' case is quite different because the letter to demonstrate their financial responsibility was sent to BUSTR and a

certification that the tanks were compliance with the State Fire Marshal's rules was sent to an insurance company.

Ms. Croskey explained that the Hearing Officer's report recommends that the Executive Director's determination to deny the Certificate of Coverage be upheld, and on that basis, eligibility to receive reimbursement from the Fund should also be denied. She restated that the reason the Certificate was denied was because the Millers did not submit the necessary application as requested by the Executive Director. Mayor Falconi asked whether the Board would need to vote on the denial of eligibility if the Board agreed to uphold the denial of the Certificate. Ms. Croskey explained that because two determinations were issued and both determinations were appealed, the Board would need to take action on both appeals.

Mr. Geyer asked if the Board could request the Executive Director to reopen Mr. Hostetler's denied eligibility determination for the consideration of additional information that might establish that the release occurred prior to the transfer to the Millers. Ms. Croskey explained that in the context of the appeals, she is defending the Executive Director's determinations, and any advice concerning legal questions the Board may have would be more appropriately addressed by another lawyer from within the Attorney General's Office. Mr. Bryant stated that he found it hard to believe that the tanks were in compliance at the time of their removal, if there were no monitoring records, inventory records, or sales records to show when the tanks were last used. Furthermore, he said he would like an opinion from an attorney concerning Ms. Caldwell's statement that it was incumbent upon the Board to prove whether or not those records exist.

Chairman Rocco recommended that the Board take no action with respect to the Report and Recommendation until another Assistant Attorney General could be brought in to ensure that the Board members' questions were fully and appropriately addressed. Mr. Hills then made a motion for the Board to take no action on the Report and Recommendation and to further evaluate the cases by bringing in another attorney for further discussion of the issues. Vice-Chairman Hull seconded.

Mayor Falconi stated that in his opinion the evidence had been sufficiently presented, and a vote concerning the Report and Recommendation should be taken. He pointed out that the matter has been unresolved for almost two years and said the Millers deserve to have an answer without further delay. Ms. Caldwell commented that her clients would be appreciative of the Board taking additional time to consider the unique facts involved before making its final decision. Chairman Rocco asked if there was any further discussion, and there was none. A vote was taken and all were in favor. The motion passed.

Hardship Applications

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 eighth request for hardship status.

Ms. Richmond said, to date, the Fund has reimbursed about \$617,000 to cleanup this release, and there is one claim with a face value of \$29,000 for which payment is pending. She noted that, based on the information provided in the hardship application and the costs that have been preapproved, the estimated cost of corrective actions for the next 12 months is \$62,000.

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 \$65,000, which exceeds the household living expenses and debt payments by \$19,000 per year. She noted he has about \$4,400 of cash on-hand and also has IRA investments.

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 \$22,500. 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 Mayor Falconi 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 incorporator, Mr. Allen Frank is requesting the Board grant hardship status to Amanda Carryout Inc.,

Ms. Richmond said, to date, the Fund has reimbursed \$324,000 for corrective actions for this release, and there is one claim totaling \$22,000 for which payment is pending. Additionally, the estimated cost of corrective action work expected to take place over the next 12 months is \$92,000.

Ms. Richmond said, based on Amanda Carryout's income tax records, the U.S. EPA ABEL model for corporations estimates a 70% probability that Amanda Carryout can afford \$64,000 in corrective action costs. She explained that the probability levels are based upon projected cash flows for the next three years. Given the costs over the next year are estimated at \$92,000 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. Bryant seconded.

Chairman Rocco asked whether Amanda Carryout or Allen Frank was the owner of the tanks. Ms. Richmond said that Amanda Carryout Inc. is the responsible party. Chairman Rocco said that the application appears to include the individual's assets as opposed to Amanda Carryout's financial information. Ms. Richmond explained that when a corporation has only one owner or an LLC has just one member, they tend to report their finances for both the corporation along with their personal information. Mr. Leasor explained that the application includes personal information, but the tax information for Amanda Carryout Inc. was used in the analysis. Chairman Rocco asked if there was any further discussion, and there was none. 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 9 and 10 are listings of facilities that, since the November Board meeting, had been issued or denied a program year 2016 or 2017 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 2016 program year Certificates of Coverage for the 12 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 two 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. 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 2017 program year Certificates of Coverage for the 180 facilities owned by 93 owners included on the list behind Tab 10.

Vice-Chairman Hull moved to ratify the issuance of the 2017 Certificates of Coverage for the facilities listed. Mayor Falconi seconded. Mr. Bryant asked what is meant by “PD Response Accepted” in the list. Ms. Richmond explained that it means that a Notice of Pending Denial had been issued to the owner, and that their response had been accepted. Chairman Rocco asked if there were any other questions, and there were none. 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 2017 program year Certificates of Coverage for the 10 facilities included on the list behind the Tab 10 green divider page.

Vice-Chairman Hull moved to ratify the denial of the 2017 Certificates of Coverage that were listed. Mr. Geyer seconded. A vote was taken and all members were in favor. The motion passed.

Confirm Public Hearing and Next Meeting and Adjourn:

Chairman Rocco said there will be a public hearing on Wednesday, February 14, 2018, at 10:00 a.m. for the purpose of soliciting comments on the proposed amendment to rule 3737-1-04 to reduce the annual fee. The next Board meeting will commence immediately following the public hearing.

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