



Petroleum Underground Storage Tank Release Compensation Board

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MINUTES OF THE 122nd MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD

June 11, 2008

BOARD MEMBERS IN ATTENDANCE

Jim Rocco
John Hull
Duane Cable
Brian Epperson
Cheryl Hilvert
Nancy Kister
Tom Kmiec
Don Kuchta
Tom Stephenson

EX-OFFICIO MEMBERS IN ATTENDANCE

Verne Ord, representing the Ohio Department of Commerce
Chris Geyer, representing the Ohio Environmental Protection Agency

OTHERS IN ATTENDANCE

Starr Richmond	Executive Director, PUSTRCB
Don Leasor	Chief Fiscal Officer, PUSTRCB
Ellen Mitton	Administrative Coordinator, PUSTRCB
Carol Anne McConnell	Claims Administrative Assistant, PUSTRCB
Rick Trippel	Environmental Claims Analyst, PUSTRCB
Jonathan Maneval	Compliance Coordinator, PUSTRCB
Khia Naylor	Assurability Analyst, PUSTRCB
John Hickey	Fiscal Specialist, PUSTRCB
Cheryl Hawkinson	Assistant Attorney General
Michael Baker	BJAAM Environmental, Inc.
Jason Grecco	BJAAM Environmental, Inc.
Andy Shrock	Parsons
Doug Darrah	ATC Associates
B. J. Reed	Speedway SuperAmerica
Mike Sawkiewicz	Environmental Compliance Services, Inc.

Minutes submitted by:

Ellen S. Mitton, Administrative Coordinator

Call To Order:

Chairman Rocco convened the one hundred twenty-second meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, June 11, 2008, at 10:15 a.m. The following members were in attendance: Jim Rocco; John Hull; Nancy Kister; Tom Stephenson; Mayor Don Kuchta; Cheryl Hilvert; Tom Kmiec; Duane Cable; Verne Ord, representing Director Kimberly Zurz, Ohio Department of Commerce; and, Chris Geyer, representing Director Chris Korleski, Ohio Environmental Protection Agency.

Prior to the beginning of the meeting, Chairman Rocco announced that Mr. Don Leasor had been selected and hired to fulfill the duties of the Chief Fiscal Officer. Following the introduction, Mr. Leasor gave a brief summary of his credentials.

Chairman Rocco asked if there were any comments, questions, or discussions regarding the minutes from the March 12, 2008, board meeting and there were none. Mr. Hull moved to approve the minutes. Ms. Kister seconded the motion. A vote was taken and all members were in favor. The motion carried.

BUSTR Report:

Chairman Rocco called upon Mr. Verne Ord, BUSTR Assistant Chief, to present the BUSTR report.

Mr. Ord stated that additional funds from the U.S. Environmental Protection Agency (US EPA) for compliance inspections had been granted last fiscal year, and with those available funds, BUSTR hired four new inspectors for Mahoning, Lucas, Hamilton, and Franklin counties during the first week of March. Mr. Ord said that in addition to those four new hires, BUSTR had hired a retired individual, referred to as a "Senior Environmental Employment" ("SEE") employee. This "SEE" employee is actually employed by the US EPA through the National Asian Pacific Center on Aging. Through this program, BUSTR is expected to hire two more "SEE" individuals in the very near future and their salaries will be funded through the US EPA. Mr. Ord stated that with the four new hires added to the current staff of six, BUSTR inspectors performed 250 compliance inspections last month, which was an all time high at the agency. He stated that momentum would put BUSTR on target to meet the Federal Energy mandate to conduct on site inspections of each UST located in Ohio every three years.

Mr. Ord said the State Fire Marshal, with the assistance of the Chief Deputy, had been working with all of BUSTR's staff to conduct an in-depth analysis of BUSTR's current procedures, methods, policies, etc., for all facets of the BUSTR program to formulate recommendations for improvements. Mr. Ord said this review analysis included release prevention, corrective action, enforcement, and record keeping and stated the program review is in the final process.

Mr. Ord stated that the Domenici-Barton Energy Policy Act of 2005 is Federal legislation signed into law on August 8, 2005. This Act amended federal laws governing the underground storage tank program and has placed notable additional requirements on the state of Ohio. He said the BUSTR Rule Revision Advisory Committee ("committee"), consisting of UST owners and/or operators and other interested parties in Ohio, are in the process of preparing the final drafts of the Ohio Administrative Code section 1301:7-9-06 and section 1301:7-9-07 to comply with recent changes in the federal law. Mr. Ord stated that the Department of Commerce legislative representatives are in the final stages of revisions needed for the proposed statute changes regarding delivery prohibition if a tank were found to be noncompliant.

Mr. Ord said there are currently 3,981 active tank owners representing 8,034 registered facilities and a total of 23,316 registered tanks. He said BUSTR had a total of 2,877 active releases and a total of 1,534 active closures.

Financial Report:

Chairman Rocco called upon Mr. Don Leasor, Chief Fiscal Officer, to present the Financial Report.

Mr. Leasor stated that the February, March, and April financials were emailed to each member. He asked if there were any questions or concerns regarding these reports. Mr. Leasor said that since the fiscal year 2008 annualized revenue and expenses would be discussed as part of the operating budget, he would not review the financials.

Operating Budget

Mr. Leasor said tank revenue is approximately \$15.3 million, which is \$146,343 more than budgeted. Mr. Leasor said the recommended budget for FY 2009 is approximately \$14.76 million, based on an estimated 21,900 USTs and assumes that about 25% of the tanks are assured at the reduced deductible. In response to a question posed by Mr. Hull, Ms. Richmond stated that the amount budgeted for prior years' fees had decreased approximately \$150,000 and these fees had been included in the proposed budget.

Mr. Leasor said that interest income is just over \$1 million, which is a negative variance of 7.52% due to the FY 2008 budget being based on a 5% interest rate. He stated the interest rate had decreased throughout the year to the current 2.1% rate, and, continues to be on a decline.

Mr. Leasor stated that the seminar revenue and expenses line item is being held at \$18,000. He explained that the Board did not hold any seminars during this fiscal year, but expects to hold seminars in conjunction with BUSTR in the upcoming fiscal year.

Mr. Leasor said that claims expense budgeted in FY 2008 was \$9 million and the actual claims expense is \$7.6 million. He stated that as discussed at the Finance Committee meeting, the proposed FY 2009 claims expense budget is being held at \$9 million.

Mr. Leasor said that the salary line item of approximately \$1.1 million budgeted for FY 2008 was down about \$109,000 due to vacancies in staff positions. He recommended the FY 2009 salary budget amount of almost \$1.14 million. He said this is a 2.2% increase over FY 2008, which reflects all positions being staffed and an anticipated pay out of leave balances for two employees; one who is retiring and another recently resigned. Mr. Leasor stated this also allowed for a 3.5% cost of living increase.

Mr. Leasor stated that the temp services line item is \$3,991 above the budgeted \$10,000 due to an unexpected employee extended absence. He stated the FY 2009 recommended budget is \$55,000, explaining that there had been a resignation of a staff member, which will be filled with a temporary services employee. Ms. Richmond said this is an entry level position and historically these positions are staffed with temporary personnel who quite often become permanent employees. She stated that the salary for the temporary position is budgeted in the temporary services line item, not in the salary line item.

Mr. Leasor said the rent line item is budgeted at \$99,593 noting that the office is in the final year of a 2-year lease, which ends June 30, 2009. He said the Board has another 2-year renewal lease option and next year's budget will address that pre-set amount if the Board decides to extend the lease.

Mr. Leasor noted that office supplies, advertising, staff development, trustee expenses, and the printing and copying line items are fairly self-explanatory and have been carried over with no changes in the recommended budget amounts.

Mr. Leasor said that the FY 2009 Legal and Professional expense budget is being held at \$210,000, which includes the Assistant Attorney General and Hearing Officer's services contracts, the audits, and miscellaneous maintenance type costs related to the computer network and STARRS database.

Mr. Leasor recommended an increase of approximately 18% related to the depreciation line item. He noted that the \$81,593 depreciation expense budget is to cover additional depreciation resulting from anticipated IT purchases and proposed web applications.

He said the bond principal payment of \$4,245,000 and the bond interest expense of \$1,769,853 are pre-set and the debt service account will be funded with these amounts.

Hearing no questions regarding the Operating Budget, Mr. Hull moved to approve the Operating Budget as proposed. Mr. Stephenson seconded. All were in favor and the motion passed.

Mr. Leasor noted that a motion was needed to obligate the claims expense as proposed for fiscal year 2009. Ms. Hilvert moved to obligate \$9 million for claims expense in fiscal year 2009. Ms. Kister seconded and a vote was taken. All were in favor and the motion passed.

Capital Budget

Mr. Leasor continued with discussion on the proposed Capital Budget. He said that the Furniture & Equipment line item is being held at \$3,000 stating there were no plans for purchases, but would like to have a minimal amount for unanticipated costs.

He said that the Data Processing & Electronics budget would be maintained at the \$15,000 figure as in fiscal year 2008. Mr. Leasor stated that this amount includes funds for the purchase of replacement workstations, an anticipated in-house email server, and miscellaneous software.

Mr. Leasor said the STARRS database contract approved in 2004 was for an amount not to exceed \$185,640. The FY 2009 budget request of \$18,564 is for the remaining contract amount to be paid only at the completion of the contract. Mr. Leasor requested an additional \$10,000 related to the database to cover out-of-scope items and other enhancements. He stated that the web application line item was not in the 2008 budget; however, he recommended \$40,000 for FY 2009 for the development of an on-line database similar to BUSTR's on-line search that allows public access. Ms. Richmond stated the web application would initially allow searches for Certificate of Coverage information, however, once developed, the Board may decide that other searches or information should be made available and these could be added.

Mr. Leasor proposed \$86,564 for the FY 2009 capital budget. Mr. Hull moved to approve the Capital Budget as proposed. Mayor Kuchta seconded. All were in favor and the motion passed.

Fee Statement Statistics

Mr. Leasor stated that to date, fees collected for fiscal year 2009 are about \$3.2 million, which is 21.7% of the budgeted amount of approximately \$14.76 million. This amount represents 4,699 tanks paid by 1,064 owners. He stated that this is considerably higher than at this time last year when \$2.7 million had been collected for 3,936 tanks.

Claims Report:

Chairman Rocco called on Carol Anne McConnell, Claims Administrative Assistant, to present the claims report. Ms. McConnell said that currently the total maximum liability of in-house open claims is approximately \$27.5 million. She said using the historical claim payout at approximately 65%, the estimated liability of unpaid in-house claims is about \$17.8 million. She said that the average cleanup cost per NFA site is \$119,231 and the average claim payout per site is about \$64,406.

Ms. McConnell said that 60 claim packages were received in May, and 87 claims were settled, which is a record month for the claims staff. She indicated that no lump sum payments were included that month. Ms. McConnell said that the average amount paid per claim sequence this program year is just over 61% explaining that per an agreement, a large claim had been paid at a very low percentage. Ms. McConnell said there also had been another agreement, which resulted in about 52 claims being settled at 75% of the reimbursable costs. Ms. McConnell said that due to these two items and disallowed costs for items such as late filing and no cost pre-approval, the amount of settlement dollars is down.

Ms. McConnell said that there has been a decrease in the number of eligibility applications received by the Board, noting that only three eligibility applications had been received in April and May. Ms. McConnell said that the eligibility determination approval rate of 70% for this program year is up slightly, saying that in comparison, the average eligibility approval rate over the past four years had been about 65%.

Ms. McConnell said that since the focus had been on claim settlements last month, the number of cost pre-approval applications reviewed was down to seven determinations last month. She noted also that there had not been as many received as in previous months of this program year. Ms. McConnell said that during this program year, the Board had received a monthly average of 14 cost pre-approval applications and an average of 16 had been determined monthly.

A discussion followed regarding the low number of pre-approval applications being submitted to the Board, especially since this is not a new requirement; and, it is assumed that the majority of consultants are aware of the pre-approval process. Mayor Kuchta thought perhaps consultants hired through banks involved in property transfers or bankruptcies when land contains underground storage tanks were uninformed as to the rules pertaining to the removal and cleanup of USTs. Following the discussion, it was determined that a pro-active approach would be to work with a banker's association to communicate the importance of timely submissions, accurate completion of forms, etc., to ensure the claim settlement process benefits the tank owner. Ms. Hawkinson, Assistant Attorney General, and Ms. Richmond will follow up on this discussion.

New Business

Hardship Applications

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

Claim #12854-0001/06/10/98, Owner – George Ratcliff

Ms. Richmond stated that this application is for owner number 12854, Mr. George Ratcliff, dba George's Market in Chillicothe, Ohio. This is Mr. Ratcliff's first request for hardship status. She said that to date, the Fund had reimbursed Mr. Ratcliff \$43,500 in corrective action costs. Ms. Richmond said that a claim package was received in-house on May 21 and is currently waiting review. In addition to the review of the hardship application, a US Environmental Protection Agency (EPA) financial capacity test was used to determine if Mr. Ratcliff had the ability to carry debt. She said that the financial capacity test indicated that Mr. Ratcliff's sources of income are limited and his reported expenses exceed his reported income. In addition, Mr. Ratcliff is retired, has no reported assets, and has multiple health issues.

Ms. Richmond recommended that the Board approve this application and grant hardship status to Mr. Ratcliff. Mayor Kuchta moved to approve the application. Mr. Kmiec seconded and a vote was taken. All members voted in the affirmative. The motion carried.

Claim #20216-0001, Owner – Muhammad Ibrahim

Ms. Richmond stated that this application had been submitted by owner number 20216, Mr. Muhammad Ibrahim, dba Star General Enterprise Inc., in Zanesville, Ohio. She said that this is Mr. Ibrahim's third request for hardship status. His first hardship status expired on November 1, 2006; and the second hardship status expires on June 13, 2008. In addition to the review of the hardship application, a US Environmental Protection Agency (EPA) financial capacity test was used to determine if Mr. Ibrahim had the ability to carry debt. She said that the financial capacity test indicated that it would be difficult for Mr. Ibrahim to cover the expense of the required clean-up. Ms. Richmond indicated that Mr. Ibrahim had two claims settled to date, totaling \$13,215.

Ms. Richmond recommended that the Board approve this application and grant hardship status to Mr. Ibrahim. Mr. Hull moved to approve the application. Mayor Kuchta seconded and a vote was taken. All members voted in the affirmative. The motion carried.

Hearing Officer Contract

Chairman Rocco said that Mr. Howard Silver had agreed to extend his contract as the Board's hearing officer at the same rate and same terms as previously contracted. This contract will be from July 1, 2008 through June 30, 2009. Mr. Hull made a motion to authorize the Chairman to enter into a contract with Howard Silver to be the Board's hearing officer at the same rate and terms as the previous year. Mayor Kuchta seconded. A vote was taken and all were in favor. The motion passed.

Employee Handbook Update

Ms. Richmond said that the state of Ohio recently had adopted "customer service hours" of 8:00 a.m. to 5:00 p.m. daily. She stated that the Petroleum Board staff had followed that guideline and now there would be adequate staff available during those customer service hours of 8:00 a.m. to 5:00, changing from 8:00 a.m. to 4:30 p.m. Ms. Richmond noted that the Employee Handbook had been updated to reflect that change. She said that record keeping procedures for arrival and departure time for staff also had been added to the Handbook. Ms. Richmond said that record keeping procedures had been in place for many years; they were just added to the Handbook. Chairman Rocco stated that if anyone would like to see the changes, ask Ms. Richmond and she would provide them.

Certificate of Coverage Ratification

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

Ms. Richmond explained that behind Tab 10 there are two lists of owners. The first is a listing of owners who had been issued a program year 2006 Certificate of Coverage; and, behind the blue divider page, a listing of

owners who had been denied a program year 2006 Certificate of Coverage. She said that behind Tab 11 there are also two lists of owners. The first is a listing of owners who had been issued a program year 2007 Certificate of Coverage; and, behind the blue divider page, a listing of owners who had been denied a program year 2007 Certificate of Coverage.

Ms. Richmond said that the process used to review the fee applications and issue or deny a Certificate of Coverage included a review for completeness to determine that full payment had been made, financial responsibility was demonstrated, and BUSTR registration was complete. In a second level of review, BUSTR registration data is considered to determine whether tanks for which coverage is sought are in compliance with BUSTR rules. Ms. Richmond said if there are no issues, the facility receives a Certificate of Coverage.

Ms. Richmond explained that if compliance issues are discovered, notice is provided to owners in accordance with Board rules and the Revised Code. Throughout this process the Board's staff works with owners to correct the fee statement record and/or the BUSTR registration record. She stated that the staff often continues to work with owners even after a determination to deny a Certificate of Coverage has been issued. The Board's rules and the Revised Code make provisions for an appeal of the determinations issued within this process.

Ms. Richmond asked that the Board ratify her actions with respect to the 90 facilities receiving 2006 Certificates of Coverage.

Mr. Hull moved to ratify the list of 2006 Certificates of Coverage that were granted. Mr. Kmiec seconded. A vote was taken and all were in favor. The motion passed.

Ms. Richmond stated that all of the processes as stated in the Board's rules and the Revised Code were followed in making the determinations for denying Certificates of Coverage. Ms. Richmond asked that the Board ratify her actions with respect to the two facilities that were denied a Certificate of Coverage for program year 2006.

Ms. Hilvert moved to ratify the list of 2006 Certificates of Coverage that were denied. Mr. Kmiec seconded. A vote was taken and all were in favor. The motion passed.

Ms. Richmond asked that the Board ratify her actions with respect to the 1,182 facilities receiving 2007 Certificates of Coverage.

Mr. Hull moved to ratify the list of 2007 Certificates of Coverage that were granted. Mr. Geyer seconded. A vote was taken and all were in favor. The motion passed.

Ms. Richmond asked that the Board ratify her actions with respect to the 97 facilities that were denied a Certificate of Coverage for program year 2007.

Mr. Epperson moved to ratify the list of 2007 Certificates of Coverage that were denied. Mr. Geyer seconded. A vote was taken and all were in favor. The motion passed.

Confirm Next Meeting

Mr. Kmiec made a motion to adjourn the meeting. Mr. Stephenson seconded. All were in favor. The next board meeting will be Wednesday, September 10, 2008 beginning at 10:00 a.m.