



# Petroleum Underground Storage Tank Release Compensation Board

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## MINUTES OF THE 132<sup>nd</sup> MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD

June 9, 2010

### BOARD MEMBERS IN ATTENDANCE

Jim Rocco  
John Hull  
Duane Cable  
Brian Epperson  
Don Kuchta  
Tom Kmiec  
Tom Stephenson

### EX-OFFICIO MEMBERS IN ATTENDANCE

George Horvath, representing Director Kimberly Zurz, Ohio Department of Commerce  
Kyana Pierson, representing Kevin L. Boyce, Ohio Treasurer of State  
Chris Geyer, representing Director Chris Korleski, Ohio Environmental Protection Agency

### OTHERS IN ATTENDANCE

Starr Richmond	Executive Director, PUSTRCB
Don Leasor	Chief Fiscal Officer, PUSTRCB
Cindy Duann	Environmental Claims Supervisor, PUSTRCB
Ellen Mitton	Administrative Coordinator, PUSTRCB
John Hickey	Fiscal Specialist, PUSTRCB
Krista Nichols	Accounts Receivable Specialist, PUSTRCB
Carla Winfrey	Compliance Analyst, PUSTRCB
Mary Jo McKenzie	Claims Coordinator, PUSTRCB
Cheryl Hawkinson	Assistant Attorney General
Julie Patton	Assistant Attorney General
Sally Scheuermann	Speedway SuperAmerica
Daniel Griest	Speedway SuperAmerica
Christina Polesovsky	OPMCA
Rob Hazel	Schneider Downs

Minutes submitted by:

Ellen S. Mitton  
Administrative Coordinator

**Call To Order:**

Chairman Rocco convened the one hundred thirty-second meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, June 9, 2010. The following members were in attendance: Jim Rocco; John Hull; Duane Cable; Mayor Don Kuchta; Brian Epperson; Tom Stephenson; Tom Kmiec; George Horvath, representing Director Kimberly Zurz, Ohio Department of Commerce; Christopher Geyer, representing Director Chris Korleski, Ohio Environmental Protection Agency; and, Kyana Pierson, representing Kevin Boyce, Ohio Treasurer of State.

Chairman Rocco welcomed Ms. Kyana Pierson, representing the Ohio Treasurer of State, Kevin Boyce.

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

**BUSTR Report:**

Chairman Rocco called upon George Horvath, Bureau Chief, to present the BUSTR report.

Mr. Horvath stated that BUSTR had been busy working on ARRA, the American Reinvestment and Recovery Act, to finalize site selections. He said BUSTR also had been working with the U.S. EPA for final site selection to assess and cleanup contamination from abandoned tanks in Ohio utilizing monies made available through ARRA. Mr. Horvath said there had been 20 sites selected with more sites being researched in order to meet the U.S. EPA spending goals.

He said BUSTR continues to work toward completing one of the requirements of the Energy Act, which mandates the on-site inspection of each underground storage tank (UST) in Ohio every three years. He said 6,256 or 79.80% of the facilities had been inspected through the end of April, leaving 1,584 to be completed this cycle. Mr. Horvath said the inspections would be completed by the August 8, 2010, deadline.

Mr. Horvath noted that in addition to the inspections, the BUSTR administrative rules are being reviewed as required by the five-year rule review, while concurrently drafting new rules to conform to the requirements of the Energy Act of 2005. Noting the rule review process, he said there should be a report released soon regarding the 2,000+ petitions received during the request for petitions timeframe.

Mr. Horvath reported there are 22,755 USTs registered with BUSTR and 3,085 active releases as of May 15, 2010.

**Financial Report:**

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

***February, March, and April Financials***

Mr. Leasor stated 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 since the fiscal year 2010 annualized revenue and expenses would be discussed as part of the operating budget, he would not discuss the financials.

Mr. Leasor noted that the proposed operating and capital budgets do not include any costs incurred to replace any of the items or equipment damaged by water. Chairman Rocco asked Ms. Richmond to explain the cause of the water-damaged equipment. She reported to the Board that on Friday, May 21, 2010, a pipe on the floor above the Board's suite burst and a major portion of the office flooded, which ruined equipment, carpeting, interior walls, and interrupted telephone service. She explained that the file servers and computers were back up on Tuesday, May 25<sup>th</sup>, and no data was lost. Ms. Richmond said some of the equipment still had to be replaced. Chairman Rocco said it is anticipated that either the Board's insurance or the building management's insurance would reimburse the Board for these expenses.

### ***Operating Budget***

Mr. Leasor said the 2010 tank revenue is just over \$15 million, approximately \$400,000 more than the \$14.65 million budgeted. Mr. Leasor said the recommended budget for fiscal year 2011 is just under \$14.5 million, based on an estimated 21,450 USTs and the assumption that 25% of the tanks would be assured at the reduced deductible. Mr. Leasor said per tank fees will remain the same at \$600 for the standard deductible and \$800 for the reduced deductible.

Mr. Leasor said property transfer fees are projected at \$97,500 for fiscal year 2011. He said a portion of fees had been assessed this year, but the money will be received in the 2011 fiscal year. He stated the prior years' fees to be collected in fiscal year 2011 less refunded amounts are anticipated to be \$450,000.

Mr. Leasor said that interest income is \$61,664, a negative variance of about 75% due to the fiscal year 2010 budget being based on a .25% interest rate. Mr. Leasor said the fiscal year 2011 recommended budget of \$66,000 for interest income is based on a .15% interest rate.

Mr. Leasor said that the miscellaneous income is being projected at \$1,000 for fiscal year 2011.

Mr. Leasor stated that both the seminar revenue and seminar expense line items are being held at \$18,000. He explained that the Board did not hold seminars during the 2010 fiscal year, but anticipates the need to hold seminars in conjunction with BUSTR in the upcoming fiscal year in response to BUSTRs' five-year rule review, which will likely affect the Board's rules.

Mr. Leasor explained the actual total income of just over \$15.1 million for fiscal year 2010 is a little more than 1% of the projected \$14.9 million.

Mr. Leasor said the claims expense budgeted in fiscal year 2010 was \$9 million and the actual claims expense is just over \$7.45 million. He stated the proposed fiscal year 2011 claims expense budget is being held at \$9 million.

Mr. Leasor said that the salary line item budgeted for fiscal year 2010 was \$1,115,000 and actual expenditures were \$1,023,451. He recommended the fiscal year 2011 budget for salaries be set at \$1,140,000. He said this amount reflects all positions being filled, anticipated leave payout, and fringe costs. Mr. Leasor stated all salaries are frozen at current levels.

Mr. Leasor noted the advertising, staff development, training, travel, and postage line items are self-explanatory and have been carried over with no changes in the recommended budget amounts.

Mr. Leasor said the temporary service line item budget in 2010 was \$34,000 and actual expenditures were \$29,235. He noted that since all staff positions are currently filled, the recommended budget for fiscal year 2011 is \$10,000.

Mr. Leasor stated the rent line item budgeted amount of \$103,798 was the amount expended for the fiscal year. He noted the Board is in the second year of a two-year lease, which expires in June 2011. Mr. Leasor said the rent expense for fiscal year 2011 would remain at \$103,798.

Mr. Leasor noted that the office supplies line item was budgeted at \$8,000, however actual expenditures were \$12,667 resulting in a unfavorable variance of 58.34% primarily due to the implementation of the asset management policy approved in November, which resulted in several items that would have been capitalized now being expensed. He said the amount requested for office supplies for fiscal year 2011 is \$13,000.

Mr. Leasor noted that the printing and copying expenditures were \$16,000 and exceeded the budget by \$339. The fiscal year 2011 recommended budget is \$16,500.

Mr. Leasor said the fiscal year 2010 budgeted amount for legal and professional expenditures was \$195,000 and actual expenditures were \$163,548, resulting in a favorable variance of \$31,452. He said the fiscal year 2011 legal and professional expense line item recommended budget is being held at \$195,000 and includes expenses for the Assistant Attorney General and Hearing Officer's services contracts, the audit, miscellaneous maintenance costs related to the computer network and STARRS' database, and actuarial services.

He said the employee expense line item for the fiscal year 2011 budget is recommended at \$16,300 and includes an anticipated 10% increase in parking expenses for 14 staff members.

Mr. Leasor said the telephone line item was budgeted in fiscal year 2010 at \$9,840 and the actual expenditure was \$9,193. He said the fiscal year 2011 proposed budget of \$10,200 includes web access, web site hosting, spam filtering, main telephone lines, 1-800 number, and an on-line back-up.

Mr. Leasor said the fiscal year 2010 depreciation expense was budgeted at a little over \$69,000 and actual depreciation was lower than expected at \$55,111. He stated this also could be partially attributed to the implementation of the asset management policy approved in November. He stated the anticipated depreciation for fiscal year 2011 is budgeted at \$54,000.

Mr. Leasor said the trustee expenses for fiscal year 2010 were budgeted at \$1,625 and actual expenditures were \$1,375. Mr. Leasor said the fiscal year 2011 trustee expense proposed budget amount is \$1,400.

Mr. Leasor stated that overall expenses for fiscal year 2010 were 10% below what was budgeted.

He said the bond principal payment of \$4,825,000 and the bond interest expense of \$1,157,440 are pre-set and the debt service account would be funded with these amounts as of the first of July.

### ***Actuary Study***

Mr. Leasor said that to manage the fiscal section's workload he has discussed with the Board's auditors moving the June 30<sup>th</sup> claim liability evaluation date to April 30<sup>th</sup> and then rolling that evaluation forward to estimate the liability as of June 30, 2010. In order to do this and provide the auditors with a level of comfort, he would like to engage the actuarial firm of Milliman Actuary

Services. He said their services would assist him in providing an analysis and developing a method to roll the April 30<sup>th</sup> data forward to June 30<sup>th</sup>.

### ***Database & Website Maintenance***

Mr. Leasor also requested the Board contract with Mark Suttner for the database and website maintenance. He said some of the items included in this contract would be claim data, audit data and reporting, annual fee statement printing and support, a linked list of owners and facilities showing owned, sold or purchased facilities, general database management and support, and maintenance of the Board's website.

In response to Chairman Rocco's question, Mr. Leasor confirmed that the \$18,000 contract for actuary services and the \$30,000 contract for software support services were included in the legal & professional line item budget within the fiscal year 2011 proposed operating budget.

### ***Finance Committee Report***

Chairman Rocco stated the Finance Committee met and discussed the two issues related to the bonds that were discussed at the March Board meeting. He said the first issue was the question of early payoff of the bonds and the other was a new bond issuance. He said the three options examined for payoff of the bonds would be: (1) payoff the bonds in August 2010; (2) payoff the bonds in August 2011; and (3) payoff the bonds in August 2012. The Chairman stated that the value realized from an early payoff decreases as the payoff date moves further out. Chairman Rocco stated that the Finance Committee recommends the Board payoff the bonds in August 2010, realizing a savings in interest of approximately \$2.1 million over the next few years. Chairman Rocco requested Mr. Leasor distribute and review these projections with the members.

Mr. Leasor said it would cost the Board \$21,300,000 to payoff the bonds on the projected date of August 15, 2010. He said since the bonds are funded a year in advance on July 1<sup>st</sup> of each year, there is already money in the debt service fund to cover a portion of that amount. He said another \$15.9 million would be needed to payoff the bonds entirely. Mr. Leasor said the claims budget could be maintained at \$9 million each year. He said, by paying off the bonds in August 2010, the unobligated balance would be lower than normal; decreasing throughout the year to a low of around \$600,000. However, the Board's expenses are fairly steady throughout the year. He said by the end of fiscal year 2011, the unobligated balance would once again be close to \$11 million. Chairman Rocco added that the most significant issue is the fact that during the 2011 fiscal year, the cash flow projections reflect the unobligated balance would fall below \$1 million in February, March, and April.

Chairman Rocco said the Finance Committee's recommendation is to payoff the bonds in August 2010, to maintain the \$9 million in the operating budget for claims, but to obligate \$4.5 million now and then obligate an additional amount later in the year, leaving more money available in the unobligated fund through the next few months. He stated that to provide some flexibility, the committee would like to have the Board look at the unobligated amount at the November meeting and at that time, discuss whether to obligate the remaining \$4.5 million or a portion thereof with the intent of obligating a total of \$9 million for claims expenses for the 2011 fiscal year.

In response to Mr. Geyer's concern regarding the unobligated fund balance falling below \$7.5 million, Chairman Rocco called upon Ms. Cheryl Hawkinson, Assistant Attorney General, to clarify the statute calling for a minimum balance in the unobligated fund. Ms. Hawkinson said in accordance with Ohio Revised Code §3737.91 (C), to maintain the financial soundness of the Fund, the Board may assess a supplemental fee in any fiscal year in which the Board finds that the unobligated balance is less than \$15 million. The supplemental fee is to be established at an amount that will ensure an unobligated

balance of at least \$15 million at the end of the fiscal year in which the supplemental fee is assessed. Ms. Hawkinson stated the word “may” allows the Board to have less in the unobligated fund as long as there is an ability to maintain the financial soundness of the fund. She stated the bond covenants require a maintenance of fee levels, thus if the bonds are paid off, the \$7.5 million unobligated balance would no longer be a requirement. Chairman Rocco stated the intent of the statute was that a supplemental fee could not be issued unless there was a financial need as opposed to implementing a supplemental fee if the unobligated balance falls below a certain amount. He expressed that he is comfortable the Board would be able to operate with a reduced unobligated balance for several months.

Chairman Rocco said the Finance Committee also recommends the Board not issue new bonds until later in the year after the current bonds are paid off. He said if the Board were to issue new bonds now, before the other bonds are paid off, it would be more difficult to amend the current bond covenants. If the Board were to issue new bonds now, the Board would be required to continue meeting the minimum \$7.5 million balance in the unobligated fund. He said if the Board were to wait until after the early payoff of the existing bonds, the Board would be able to issue new bonds and negotiate new bond covenants or possibly no covenants for the new issuance. Chairman Rocco stated the committee was looking at a five year, \$5 million issuance and that it would be a staged issuance, thus some portion of the bonds would mature in one year, some in two years, and so forth. He said on that basis the Board could negotiate a better interest rate for the bonds ranging from 2.5% to 4.5% with an approximate interest rate over the five-year period of about 3.5%. Mr. Leasor then reviewed the pro-forma statement regarding the assumption of issuing \$5 million in bonds in October 2010 for a term of five years. He said in regard to the non-operating revenues, the pro-forma shows the bond proceeds of a \$5 million issue would be between \$4.8 and \$4.9 million; and, the annual expenses for servicing the debt, including interest and principal payments, would be about \$1,100,000 in each of the five years. This would increase the unobligated account balance an additional \$4.8 million. Chairman Rocco said the members would not be deciding on the new bond issuance at this meeting; but the Finance Committee would like to move forward with the early payoff of the current bonds.

In response to Mr. Geyer’s question, Chairman Rocco explained the Finance Committee was looking at a short-term issuance because the Board did not want to carry this debt for a long period of time, wanted to minimize the cost of borrowing money, and actually retire the debt as quickly as possible while addressing any short-term cash issues.

Chairman Rocco requested a motion to approve the 2011 Operating Budget as proposed. Mayor Kuchta so moved and Mr. Kmiec seconded. A vote was taken and nine of the members were in favor. Mr. Horvath abstained. The motion passed.

Chairman Rocco requested a motion to authorize the Chairman to enter into a contract with Milliman Actuary Services to provide actuarial services to assist in modifying the claim liability analysis to reflect an April 30 valuation and to develop the framework for the roll-forward of this analysis to June 30 for an amount not to exceed \$18,000. Mr. Hull so moved and Mr. Cable seconded the motion. A vote was taken and nine of the members were in favor. Mr. Horvath abstained. The motion passed.

Chairman Rocco requested a motion to authorize the Chairman to negotiate and enter into a one-year contract beginning July 1, 2010, with Mark Suttner for STARRS database work, website development and consulting services in an amount not to exceed \$30,000. Mr. Hull so moved. Mr. Geyer seconded and a vote was taken. Nine of the members voted in favor. Mr. Horvath abstained. The motion passed.

Chairman Rocco requested a motion to authorize calling in the existing bonds in August 2010. Mr. Hull so moved. Mayor Kuchta seconded. A vote was taken and nine of the members were in favor. Mr. Horvath abstained. The motion passed.

Chairman Rocco requested a motion to authorize the Chairman and the Executive Director to engage all necessary parties and to initiate the process to determine the issuance of new bonds. Mr. Hull so moved and Mr. Stephenson seconded. Prior to the vote Mr. Geyer requested that when the bond issuance vote comes before the Board, a pro-forma with the bond issuance and a pro-forma without the bond issuance be prepared allowing the members to do comparisons before making the final decision. A vote was taken and nine of the members were in favor. Mr. Horvath abstained. The motion passed.

Chairman Rocco said it is the intention of the Finance Committee to report to the Board at the September meeting the options of whether to move forward and begin the process of a new bond issuance or not to move forward with a new bond issue.

### ***Capital Budget***

Chairman Rocco called upon Mr. Leasor to present the proposed Capital Budget for fiscal year 2011.

Mr. Leasor said the Furniture & Equipment line item for fiscal year 2011 is recommended at \$7,000 and includes the purchase of office furniture needed due to a reorganization of the current office space.

He said the Data Processing & Electronics budget for computer replacements and other general IT purchases was set at \$15,000 in 2010. He said actual expenses were \$10,351. Mr. Leasor said that the recommended budget for fiscal year 2011 is \$12,000 for the purchase of prepackaged software and replacement workstations as needed.

In response to Mr. Hull's question, Mr. Leasor confirmed that the fiscal year 2011 capital budget does not include any anticipated costs in the event the insurance company does not pay 100% of the claims submitted for water damaged computer equipment. Chairman Rocco said the assumption is that the insurance company would pay 100% of the claims submitted.

Mr. Leasor stated the 2010 budget included \$8,000 for the purchase of a high quality, cost-efficient copier for the claims section of the office. The actual expenditure was \$6,562. The recommended budget for fiscal year 2011 is \$10,000 for the purchase of a main production copier to replace the existing unit, which is more than 10 years old.

Mr. Leasor stated the fiscal year 2010 budget for database out-of-scope and "wouldn't it be nice if" items was \$17,500. He stated actual expenditures were \$13,445. Mr. Leasor said the database out-of-scope and "wouldn't it be nice" line item recommended for fiscal year 2011 is \$5,000, which includes carry over from the 2010 budget to finalize the reorganization of reasonable cost tracking in the database.

Mr. Leasor said the 2010 budget for the web application line item was \$20,000. He said the actual expenditures were \$19,678. This money was for the final phase of project development of a searchable online database, [petroboardinquiry.org](http://petroboardinquiry.org). He said this website provides public access to information about certificates of coverage, eligibility, and claim packages. Mr. Leasor said this project was completed and no additional amount was being requested for the 2011 fiscal year.

Mr. Leasor said the fiscal year 2010 Capital Budget was set at \$63,500 and actual expenditures were \$50,036. Mr. Leasor recommended a total fiscal year 2011 Capital Budget of \$34,000.

Mr. Hull moved to approve the amount of \$34,000 recommended for the fiscal year 2011 Capital Budget. Mr. Epperson seconded the motion.

Mr. Hull moved to amend the motion and to add an additional \$5,000 to the Capital Budget as a contingency line item to assure sufficient funds would be available should the insurance company not cover all claims submitted for the water damaged equipment. Mr. Geyer seconded the amendment. A vote was taken and nine of the members were in favor. Mr. Horvath abstained. The motion passed.

Chairman Rocco stated there is a motion on the floor to approve the Capital Budget as proposed with an additional \$5,000 for a total of \$39,000. A vote was taken and nine of the members were in favor. Mr. Horvath abstained. The motion passed.

Chairman Rocco noted that a motion was needed to obligate monies for claims expense as recommended by the Finance Committee for fiscal year 2011 by obligating \$4.5 million at this time and later in the year, obligating an additional \$4.5 million. Mr. Hull so moved. Mr. Geyer seconded. A vote was taken and nine of the members were in favor. Mr. Horvath abstained. The motion passed.

#### ***Fee Statement Statistics***

Mr. Leasor stated that to date, per tank fees collected were \$4,398,533 as compared to the prior year fees collected of \$4,318,240 for the same period of time, realizing a 2% increase over the prior year. He said between July 1, 2009 and June 8, 2010, there had been \$14,169,999 collected for program year 2009 fees and \$855,000 collected for prior year fees net of any refunds.

Mr. Leasor said as of June 8, 2010, fees had been received for 6,745 tanks paid by 1,212 owners as compared to 6,599 tanks paid by 1,220 owners for the same prior year period, which also reflects a 2% increase. He said for program year 2009, fees had been collected for 21,443 tanks paid by 3,398 owners and this number would increase, as the end of the program year is June 30.

Mr. Leasor said that for the program year beginning on July 1, \$4,398,544 had been collected to date and this represents 30.36% of the \$14,490,000 budgeted. He said that so far fees had been paid for 6,745 tanks, representing 31.45% of the 21,450 tanks anticipated to be covered in the upcoming program year.

Mr. Leasor presented a report detailing the count of owners based on the number of USTs owned. There are 682 owners who own only one underground storage tank (UST), which is 18.47% of the 3,692 owners. He said there are six large owners who own 300 or more USTs, representing .16% of the total number of owners but 19% of the existing number of tanks. Mr. Leasor said the summary shows there are 3,359 owners or 90.98% of owners with six or fewer USTs, which represents 47.37% of the facilities. He said there are 333 owners, or 9.02%, with seven or more USTs, representing 52.63% of the facilities.

Mr. Leasor stated the next report details the number of owners broken out by the number of facilities owned. He noted the largest percentage of tank owners' own only one facility, which is 84.43% of the total number of owners. He said at the opposite end of the spectrum, there is only one owner, who owns 200 or more facilities, representing 8.83% of all USTs assured by the Fund.



Chairman Rocco noted these statistics show the demographics of Ohio tank owners and the fact that the greatest percentage of tank owners' own one facility, which appears to be the trend as the program moves forward.

### ***Amnesty Program***

Mr. Leasor said in an attempt to resolve outstanding late fees without escalating delinquent accounts to the Attorney General's Office for collection, the Board offered its first ever amnesty program to owners with outstanding per-tank and late payment fees. He explained that the owners were provided a reduction in their late payment fees based upon a pre-set formula; and, the amnesty is applied only to reduce late payment fees, not the annual per-tank fees. Mr. Leasor said 40 owners called to take advantage of the program, which ends July 1, 2010. He said these 40 owners accounted for outstanding annual and late payment fees of \$486,000 prior to the amnesty reduction; and, under the amnesty program guidelines, these outstanding fees were reduced to \$251,700. Mr. Leasor said to date there had been \$43,600 in fees collected. He said owners were also given the option to make payment arrangements with the Attorney General's Office. He said the Board does not yet have any figures regarding payments or payment plans the Attorney General's Office established with these owners.

### **Claims Report:**

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

Ms. Duann said that in the past three months the current total maximum liability of in-house open claims had dropped from about \$29 million to approximately \$26.5 million. She said this is due to the value of claims settled being greater than the value of the claims received during this time period. Ms. Duann said using the historical claim payout ratio of 65%, the actual anticipated claim liability of unpaid in-house claims is about \$17.5 million.

She said 1,846 fund eligible sites had received an NFA and the average cleanup cost is \$125,849 per NFA site and the average payout is just over \$68,000 per NFA site. Ms. Duann said that for the 169 NFA sites cleaned up exclusively under BUSTR's 1999 and/or 2005 risk based corrective action (RBCA) rules, the average cleanup cost is \$71,786 per site with an average payout of \$23,442.

Ms. Duann stated that except for claims submitted by two major oil companies, claims are usually settled within twelve months of receipt. She said however, the average number of days to claim settlement is only 290 days (or less than ten months) as a result of bundling sequence claims for the same release for review and settlement at the same time.

Ms. Duann said there are currently 29 claims under appeal. She stated a number of these appealed claims are in settlement negotiations or are scheduled for a hearing.

Ms. Duann said with one more month to go in this program year, the total net value of claims settled is approximately \$11 million, which is very close to the amount in the last two program years. She said the settlement amount offered thus far in this program year is \$7.2 million, making the average payout approximately 66%, which is fairly consistent with the 67% payout average of the previous four years.

Ms. Duann said so far this program year, the Board received an average of 69 claims per month and settled an average of 64 per month. She said on average 27% of the claim face values are disallowed. She said 16% of the disallowed costs are for late filing; 11% are for excessive costs; 24% are due to negotiated settlements; and, 30% are for costs not necessary for corrective actions.

Ms. Duann said the Board received an average of seven eligibility applications per month for this program year and an average of eight eligibility applications had been determined per month. Ms. Duann said currently there are 29 open eligibility applications to be determined, which include 14 applications received in May. Ms. Duann said in the past 11 months, the Board received 78 eligibility applications, and in that same time period, 70 eligibility applications were approved and 21 applications were denied.

Ms. Duann said typically cost pre-approvals are being reviewed within 45-60 days of receipt. She said during this program year, the Board received an average of 16 requests for cost pre-approval per month and issued an average of 17 pre-approval notifications per month. Ms. Duann said there are currently 70 cost pre-approval applications in-house to be reviewed.

Ms. Duann said the Board has seen a slight decrease in the number of cost pre-approval requests as a result of the rule changes in November 2009. She stated the Board's rules now allow tier 3 plans, monitoring plans and model calibration plans estimated at less than \$6,000 to be completed without cost pre-approval; and, allow the lesser of \$6,000 or 20% of the pre-approved amount to be expended without seeking additional cost pre-approval.

### **New Business**

Chairman Rocco called upon Ms. Richmond to present the hardship application. Ms. Richmond stated when hardship status is granted to an owner that owner's claims are reviewed within 30-days of receipt, thereby reducing the financial burden. A hardship status is granted for one year and can be renewed annually by submitting another application accompanied with updated financial information.

### ***Hardship Applications***

*Claim #111695-0001/05/25/90, Owner – William Mercer, dba Mercer's Trading Post*

Ms. Richmond stated that Mr. Mercer is the responsible person for a release that occurred at 522 Wyoming Avenue in Wyoming, Ohio, in 1990. She said this is Mr. Mercer's second request for hardship status; his previous hardship status expired in 2007. Ms. Richmond said to date, the Fund has reimbursed Mr. Mercer approximately \$173,000 and, there is one unsettled claim in-house with a face value of approximately \$7,600.

Ms. Richmond said both Mr. Mercer and his spouse are retired and are living on retirement income including social security, pensions, and some rental property income. She said in addition to the review of the hardship application, a U.S. Environmental Protection Agency (EPA) financial capacity test was used to evaluate Mr. Mercer's cash flow and determine whether he had the ability to carry additional debt to finance the costs of corrective actions. The financial capacity test indicated Mr. Mercer lacks sufficient resources to cover future living expenses and, therefore, it is highly unlikely he would have the ability to pay for or finance future corrective action costs.

Ms. Richmond recommended the Board approve this application and grant hardship status to Mr. Mercer. Mayor Kuchta moved to approve this application and Mr. Hull seconded. A vote was taken and nine of the members were in favor. Mr. Horvath abstained. The motion passed.

### ***Assistant Attorney General Memorandum of Understanding***

Ms. Richmond said that the Memorandum of Understanding (MOU) between the Board and the Attorney General regarding the legal services provided to the Board by Ms. Cheryl Hawkinson would expire on June 30, 2010. She said the MOU would be for one year beginning July 1, 2010 and ending June 30, 2011. Ms. Richmond requested that the Board authorize the Chairman to enter into a

Memorandum of Understanding with the Attorney General for the continuation of legal services provided by Ms. Hawkinson for the period of July 1, 2010 to June 30, 2011. Mr. Hull so moved. Mr. Epperson seconded. A vote was taken and nine of the members were in favor. Mr. Horvath abstained. The motion passed.

### ***Hearing Officer Contract***

Ms. Richmond said that the contract for Howard Silver, the Board's hearing officer, would expire on June 30, 2010. She talked with Mr. Silver and he agreed to extend his contract at the same rate and terms as previously contracted. This contract will be from July 1, 2010 through June 30, 2011. Following a brief discussion regarding Mr. Silver's hourly pay rate, Mr. Hull made a motion to authorize the Chairman to enter into a contract with Howard Silver to extend his contract to June 30, 2011. Mr. Cable seconded. A vote was taken and nine of the members were in favor. Mr. Horvath abstained. The motion passed.

### ***OPERS Mandate Ratification***

Ms. Richmond was called upon to discuss the mandate from Ohio Public Employees Retirement System (OPERS). She said OPERS mandated the use of a website for reporting and the submission of documents, and, in order to use that website you must have the authority to bind the employer. She said John Hickey, who typically does this, is also the payroll officer and fiscal specialist. Ms. Richmond said she had discussed this issue with Chairman Rocco and Ms. Hawkinson, Assistant Attorney General, prior to giving that authority to Mr. Hickey. Ms. Richmond asked that the Board ratify her actions with respect to granting authority to John Hickey to bind the Board in the use of the Ohio Public Employees Retirement System website for the purpose of reporting as well as submitting certain documents. Mr. Hull so moved and Mr. Geyer seconded. A vote was taken and nine of the members were in favor. Mr. Horvath abstained. The motion passed.

### ***Certificate 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 explained that behind Tab 7 there are two lists of owners. The first is a listing of owners who had been issued a program year 2008 Certificate of Coverage; and, behind the blue divider page, a listing of owners who had been denied a program year 2008 Certificate of Coverage. She said behind Tab 8 there is a listing of owners who had been issued a program year 2009 Certificate of Coverage, and behind the blue divider page, a listing of owners who had been denied a program year 2009 Certificate of Coverage since the March Board meeting.

Ms. Richmond said 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 was considered to determine whether tanks for which coverage is sought are in compliance with BUSTR's rules. Ms. Richmond said if there are no issues, the facility receives a Certificate of Coverage.

Ms. Richmond explained if compliance issues are discovered, notice is provided to owners in accordance with the Board's rules and the Revised Code. Throughout this process the Board's staff works with the owners to correct the fee statement record and/or refers the owners to BUSTR to correct the registration record. She stated the staff often continues to work with owners even after a determination to deny a Certificate of Coverage had 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 eight owners of 22 facilities receiving 2008 Certificates of Coverage.

Mr. Hull moved to ratify the list of 2008 Certificates of Coverage that were granted. Mr. Geyer seconded. A vote was taken and nine of the members were in favor. Mr. Horvath abstained. The motion passed.

Ms. Richmond stated 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 19 facilities that were denied a Certificate of Coverage for program year 2008.

Mr. Hull moved to ratify the list of 2008 Certificates of Coverage that were denied. Mayor Kuchta seconded. A vote was taken and nine of the members were in favor. Mr. Horvath abstained. The motion passed.

Ms. Richmond asked that the Board ratify her actions with respect to the 135 owners of 298 facilities receiving 2009 Certificates of Coverage.

Mr. Hull moved to ratify the list of 2009 Certificates of Coverage that were granted. Mr. Epperson seconded. A vote was taken and nine of the members were in favor. Mr. Horvath abstained. The motion passed.

Ms. Richmond asked that the Board ratify her actions with respect to the 50 facilities that were denied a Certificate of Coverage for program year 2009.

Mr. Hull moved to ratify the list of 2009 Certificates of Coverage that were denied. Mr. Epperson seconded. A vote was taken and nine of the members were in favor. Mr. Horvath abstained. The motion passed.

Ms. Richmond said behind Tab 9 there is a listing of owners who had been issued a program year 2010 Certificate of Coverage.

Ms. Richmond stated the process to issue and, if appropriate, deny a Certificate of Coverage changed in November 2009 with the amendments to the Board's rules. She said under the new rule, the review of BUSTR registration data to determine compliance with the State Fire Marshal's rules was eliminated.

Ms. Richmond explained during the review for the 2010 program year Certificates of Coverage the staff now only ensures 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 the staff determines all these requirements have been met and the tanks existed in previous years and a Certificate was issued to the owner in at least one of the prior two years, then a Certificate of Coverage is issued. Ms. Richmond said if the requirements are not met, the Certificate is denied in accordance with the Board's rules as previously discussed. She said that to date, no 2010 Certificates had been denied.

She said all processes within the Board's rules and the Revised Code were followed to make the determination to issue the program year 2010 Certificates of Coverage.

Ms. Richmond asked that the Board ratify her actions with respect to the 493 owners of 683 facilities receiving 2010 Certificates of Coverage on the list behind Tab 9.

Mr. Hull moved to ratify the list of 2010 Certificates of Coverage that were granted. Mayor Kuchta seconded. A vote was taken and nine of the members were in favor. Mr. Horvath abstained. The motion passed.

### ***Executive Session***

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

Prior to moving into executive session, Chairman Rocco stated he had become aware of a concern regarding Mr. Epperson and himself participating in the executive session. Both board members were asked to recuse themselves from this portion of the meeting. Chairman Rocco turned the meeting over to Vice Chairman Hull.

### ***Reconvene Meeting***

The Board adjourned from executive session and reconvened the public meeting. Vice Chairman Hull requested a motion to authorize the Attorney General's Office to begin negotiations with the entities identified by Special Counsel with respect to pending litigation and to authorize the Executive Director in consultation with the Vice Chairman to make all necessary decisions on the litigation, including filing complaints as needed, but specifically excluding approving any settlements which shall be approved by a quorum of the Board. The Attorney General's Office and Special Counsel shall keep the Executive Director and the Vice Chairman informed of all litigation strategy during the course of litigation including but not limited to negotiations, settlement offers, discovery, and causes of actions. Mayor Kuchta so moved and Mr. Kmiec seconded. Vice Chairman Hull asked if there were any questions or discussion.

Mr. Stephenson stated he would like to state for the record that he is exceptionally disturbed and bothered by this entire situation for several reasons. He stated two members had been asked to recuse themselves and their input is valuable. He noted that part of the board makeup is to have different aspects of different industries represented to fully represent all the tank owners. He said he did not think that would be provided now. Mr. Stephenson said to recuse them and to go ahead with a July 1<sup>st</sup> or some other time at the discretion of the Attorney General's office, bothered him very much.

In answer to Mr. Kmiec's question, Ms. Hawkinson stated that she had requested both board members to recuse themselves.

Vice Chairman Hull noted there was a motion on the floor. A vote was taken and six of the members were in favor. Mr. Stephenson voted nay. Ms. Hawkinson stated there were two recusals. Mr. Horvath abstained. The motion passed.

### ***Confirm Next Meeting***

Mr. Kmiec made a motion to adjourn the meeting. Mayor Kuchta seconded. All were in favor. The next board meeting will be Wednesday, September 8, 2010, beginning at 10:00 a.m.