



Petroleum Underground Storage Tank Release Compensation Board

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MINUTES OF THE 126th MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD March 11, 2009

BOARD MEMBERS IN ATTENDANCE

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

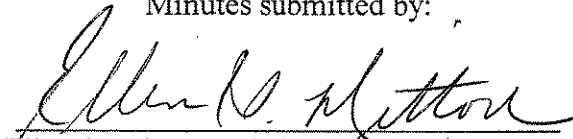
EX-OFFICIO MEMBERS IN ATTENDANCE

Verne Ord, representing the Ohio Department of Commerce
Jake Wozniak, representing the Ohio Treasurer of State
Chris Geyer, representing 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
Rita Arnold	Office Assistant, PUSTRCB
Krista Nichols	Accounts Receivable Specialist, PUSTRCB
Michael Grube	Environmental Claims Analyst, PUSTRCB
Adam Campbell	Speedway SuperAmerica
B. J. Reed	Speedway SuperAmerica
Michael Baker	BJAAM
Jodi Handlin	BJAAM
Doug Darrah	ATC Associates
Jennifer Rhoads	OPMCA
Ken Yokoyama	Parsons

Minutes submitted by:


Ellen S. Mitton, Administrative Coordinator

Call To Order:

Chairman Rocco convened the one hundred twenty-sixth meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, March 11, 2009, at 10:05 a.m. The following members were in attendance: Jim Rocco; John Hull; Duane Cable; Brian Epperson; Tom Stephenson; Steve Hightower; Mayor Don Kuchta; Cheryl Hilvert; Tom Kmiec; Verne Ord, representing Director Kimberly Zurz, Ohio Department of Commerce; Christopher Geyer, representing Director Chris Korleski, Ohio Environmental Protection Agency; and, Jake Wozniak, representing Kevin Boyce, Ohio Treasurer of State.

Chairman Rocco asked if there were any comments, questions, or discussions regarding the minutes from the January board meeting and there were none. Mr. Cable moved to approve the minutes. Ms. Hilvert seconded the motion. A vote was taken and eleven members voted in the affirmative. Mr. Geyer abstained. The motion carried.

BUSTR Report:

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

Mr. Ord stated that BUSTR is on track to meet the requirement of the Energy Act, which mandates the on-site inspection of each underground storage tank (UST) in Ohio every three years. He said that to date there had been inspections at 3,185 facilities, which represents approximately 43% of total facilities. Mr. Ord said that BUSTR inspections are about a year and one-half into the first three-year cycle.

Mr. Ord stated that BUSTR requested two additional "Senior Environmental Employment" ("SEE") employees to be hired in addition to the two previously hired last year. The "SEE" employees are actually employed by the USEPA through the National Asian Pacific Center on Aging. Mr. Ord stated their salaries are funded through the USEPA.

Mr. Ord said that a new procedure to allow internet interaction regarding the five-year rule review is in its early stages. He said they are currently working through all the steps necessary to ensure that BUSTR has the ability to receive and respond to emails from the UST community. Mr. Ord stated that all registered active tank owners, as well as consultants, would receive information regarding the five-year rule review.

Mr. Ord said it appears that the Ohio tank population is beginning to stabilize, saying that while tanks are still going into the ground, it appears they are coming out of the ground at a slightly faster rate. He noted that on December 6, 2008, there were 23,153 registered tanks, and as of February 28, 2009, Ohio is down to 23,099 USTs.

Financial Report:

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

Mr. Leasor stated that the Auditor of State had completed the desk review of the 2009 audit, which was presented at the January Board meeting. He said that the Auditor did not make any changes and the audit was released on February 24, 2009. Mr. Leasor said that as discussed at the last Board meeting, the contract with Schneider Downs ended, and he is working with the Auditor of State's office regarding the Request for Proposal (RFP) process for the next five-year audit cycle. He added that the Auditor of State's office would be

sending out the RFPs in mid-April. Mr. Leasor hopes to have a firm selected by the June Board meeting, at which time he will seek the Board's final approval. He added there had been discussions with the Auditor of State's office about the possibility of performing the claim liability study off schedule in order to spread the work throughout the year.

Mr. Leasor said there had been testimony given before the Agriculture and Development Sub-Committee as part of the biennial budget request. That budget request is entirely for salary expenses.

Mr. Leasor said that the December and January financials were mailed to each member. He asked if there were any questions or concerns to be discussed. Hearing none, he began his report with the January figures.

Mr. Leasor said that as of January 31, 2009, the unobligated account balance was approximately \$11.52 million. He said that there was an additional amount of just under \$4.14 million remaining in the obligated account that is set aside for fiscal year 2009 claim settlement payments, and the debt service account was a little under \$7.03 million.

Mr. Leasor said to date there had been approximately \$14.46 million in tank fees collected, representing 98% of the \$14.76 million budgeted for the 2008 program year. He said that this amount is net of approximately \$65,000 in refunded tank fees.

He noted that the claims expense for January was approximately \$667,000. Mr. Leasor said that the claims expense for December was \$2.2 million, which included a lump sum payment to a major oil company in the amount of \$1.82 million. He stated that approximately \$5.85 million had been paid in claims from July 1, 2008, to date.

Reporting on other line items, Mr. Leasor explained that in January the interest income was down significantly due to a decrease in yield in the STAR Ohio account. He said that the interest rate in January was down to .7% and in February the rate had dropped to .4%. Mr. Leasor stated that if the yields remain this low, we will not meet the budgeted interest income for 2009; however, interest income accounts for less than 5% of the total budgeted revenue.

Mr. Leasor noted that the legal and professional line item for December and January was higher than prior months. He said that the December expenses were for the first quarter payment for the Assistant Attorney General's services, and the January expenses were related to the 2008 audit.

Mr. Leasor noted that the travel line item is now about 85% of the amount budgeted. He said the \$1,503 expense in January included Board members' travel reimbursement and reimbursement to a staff member for travel to Cleveland, Ohio for a court hearing.

Mr. Leasor stated that with the exception of cyclical items such as postage, printing and copying, and the bond trustee expense, all other expense line items are on target through the end of January.

Claims Report:

Chairman Rocco called on Ms. Cindy Duann, Environmental Claims Supervisor, to present the claims report. Ms. Duann said that currently the total maximum liability of in-house open claims is approximately \$27.8 million.

Ms. Duann said using the historical claim payout of 70%, the actual anticipated claim liability of unpaid claims is about \$19 million. She said that 1,731 fund eligible sites had received an NFA and the average cleanup cost per NFA site is \$122,965. Ms. Duann said that 134 NFA'd sites, or less than 8%, were cleaned up exclusively under BUSTR's 1999 and/or 2005 risk based correction action rules (RBCA) with an average cleanup cost of \$67,359 per site. She said for those 77 NFA'd RBCA sites that did reach their deductible, the average clean up cost is \$106,067 per site.

Ms. Duann said there are currently 39 claims under appeal. Ms. Duann said that settlement addendums had been issued for many of these appeals; and, more information had been requested from the tank owners for some appeals.

She said that during the last two months, the claims staff had received a total of 160 claims and settled 77 claims. Ms. Duann anticipates a total claim settlement offer of about \$8 million this year. She said that the average payout rate in this program year is at 68.6%, which is in line with the last three years' statistics.

Ms. Duann said the Board had received a total of 16 eligibility applications in the last four months. She said the overall average for this program year is seven applications per month and an average of eight applications had been determined monthly. Ms. Duann said that 35% of the eligibility packages had been denied; and, of those 22 denials, only one was due to late filing. She said currently there are 18 eligibility applications awaiting review.

Ms. Duann said the Board received 11 RAP cost pre-approval applications last month. She stated that ten of these cost pre-approvals were for expensive Dual Phase Extraction (DPE) remediation and all ten of the applications were from one consultant. Ms. Duann stated that communications had been established with BUSTR for joint review of these DPE RAPs.

Ms. Duann stated that so far this program year, an average of 15 cost pre-approval applications were received per month, and an average of 17 per month were determined.

New Business

Hardship Application

Claim #18344-0001/10/26/98 Owner – Gary Glessner, dba Red Stripe Associates

Ms. Richmond stated that this application is from Gary Glessner, owner #18344, doing business as Red Stripe Associates in St. Clairsville, Ohio. This is Mr. Glessner's ninth request for hardship status. Previous hardship applications expired in 2001, 2002, 2003, 2005, 2006, and 2008. Ms. Richmond stated that applications for hardship status were denied in August 2006 and November 2008.

Ms. Richmond noted that Mr. Glessner's previous hardship renewal application was reviewed and denied at the November 12, 2008, Board meeting. Ms. Richmond said she had talked with Mr. Glessner and he informed her that both the property and the business were sold at a loss in November 2008 and now there are no assets. Red Stripe Associates is still responsible for and is continuing the corrective action.

She said that to date the Fund had reimbursed Mr. Glessner almost \$150,100 in corrective action costs. Ms. Richmond said that the most recent claim was received in December 2008 and totals \$18,540. In addition to

the review of the hardship application, a US Environmental Protection Agency (EPA) financial capacity test was used to determine if Mr. Glessner's company, Red Stripe Associates, had the ability to carry debt. She said that the financial capacity test indicated that Red Stripe Associates could not afford corrective action costs.

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

Office Lease

Chairman Rocco called upon Ms. Richmond to discuss the office lease renewal option. Ms. Richmond stated that the lease for our current office space and additional storage space will expire on June 30, 2009. She said the lease has a renewal option for the period of July 1, 2009 through June 30, 2011 and a monthly rate of about \$8,650, which is a \$350 per month increase. Ms. Richmond stated that the lease requires a 60-day notice to exercise the renewal option; and, the rate had been negotiated with the original lease.

Mr. Hull moved to authorize the Chairman to exercise the lease option for the Board's office space and dedicated storage space on the 15th floor of the LeVeque Tower for a time period of July 1, 2009 through June 30, 2011. Mr. Geyer seconded. A vote was taken and all were in favor. The motion carried.

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 6 there are 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. She said that behind Tab 7 there is a list 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.

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 the Board's rules and the Revised Code. Throughout this process the Board's staff works with owners to correct the fee statement record and/or refers the owner to BUSTR to correct the registration record. She stated that 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 four owners of four facilities receiving 2007 Certificates of Coverage.

Mr. Hull moved to ratify the list of 2007 Certificates of Coverage that were granted. Mr. Stephenson 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 one facility that was 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. Hull 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 363 owners of 727 facilities receiving 2008 Certificates of Coverage.

Mr. Epperson moved to ratify the list of 2008 Certificates of Coverage that were granted. Mr. Hull 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 13 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. Mr. Geyer seconded. A vote was taken and all were in favor. The motion passed.

Chairman Rocco suggested, and the Board members agreed, that future mailings regarding Board meetings, agendas, etc., would be sent via email only. Mr. Hull requested that the agenda be sent as a separate file.

Executive Session

Chairman Rocco requested a motion to go into executive session pursuant to R.C. 121.22 (G)(3) to discuss matters of pending or imminent court action.

Mr. Hull so moved. Mr. Hightower seconded and a roll call vote followed. The following members voted in the affirmative: Messrs. Rocco, Hull, Cable, Epperson, Ord, Hightower, Kmiec, Kuchta, Stephenson, Geyer, Wozniak, and Ms. Hilvert. There were no nays and the motion passed.

The Board adjourned from executive session and Chairman Rocco reconvened the public meeting. Chairman Rocco stated that the Board had received a copy of a letter sent to Lieutenant Governor Fisher, which suggested that major oil companies had been able to recover environmental liability costs from insurance companies and that some of the costs recovered are associated with underground storage tank corrective actions. If that is the case, there may be an opportunity for the Fund to recover some costs from these oil companies for sites that received reimbursement from the Fund. At this time, we will continue to research this matter with the intention of further discussion at the June 10th Board meeting.

Confirm Next Meeting

Mr. Kmiec made a motion to adjourn the meeting. Mr. Hightower seconded. All were in favor. The next board meeting will be Wednesday, June 10, 2009, beginning at 10:00 a.m.