



Petroleum Underground Storage Tank Release Compensation Board

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MINUTES OF THE 152nd MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD March 20, 2014

BOARD MEMBERS IN ATTENDANCE

Jim Rocco
John Hull
Don Kuchta
Tom Stephenson

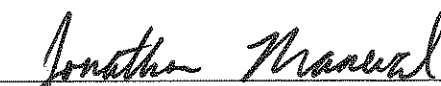
EX-OFFICIO MEMBERS IN ATTENDANCE

Bill Hills, representing Director Andre Porter, Ohio Department of Commerce
Chris Geyer, representing Director Craig Butler, Ohio Environmental Protection Agency
Bob Field, 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 |
| John Hickey | Fiscal Specialist, PUSTRCB |
| Cindy Knight | Accounts Receivable Analyst, PUSTRCB |
| Carla Dowling-Fitzpatrick | Assistant Attorney General |
| Chris O'Neil | Pangean-CMD Associates, Inc. |
| Doug Darrah | Cardno ATC |
| Will Latt | Speedway, LLC |
| Ryan Sabol | Speedway, LLC |

Minutes submitted by:


Jonathan Maneval
Administrative Coordinator

Call to Order:

Chairman Rocco convened the one hundred fifty-second meeting of the Petroleum Underground Storage Tank Release Compensation Board on Thursday, March 20, 2014.

The following members were in attendance: Jim Rocco; John Hull; Don Kuchta; Tom Stephenson; Bill Hills, representing Director Andre Porter, Ohio Department of Commerce; Chris Geyer, representing Director Craig Butler, Ohio Environmental Protection Agency; and Bob Field, representing Josh Mandel, State Treasurer of Ohio.

The following members were not in attendance: Stephen Hightower and Cheryl Hilvert.

Chairman Rocco announced that Bruce Kranz was relocating to Maryland, and as a result, had resigned from the Board. He invited the Board members to recommend individuals to replace Mr. Kranz as a representative of the insurance industry.

Minutes:

Chairman Rocco asked if there were any comments or questions regarding the minutes from the February 19, 2014 Board meeting, and there were none. Mayor Kuchta moved to approve the minutes. Vice-Chairman Hull 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 BUSTR's records management section completed over 400 public record requests from the Board. These records had been requested as part of the Board's ongoing subrogation litigation with major oil companies.

Mr. Hills stated that one of BUSTR's field inspectors transferred to an elevator inspection position. He noted the Office of Human Resources at Commerce was able to process two lateral personnel moves and post the inspector position within one week.

Mr. Hills said the monies in the Revolving Loan Fund will be available beginning July 1, 2014. This fund will provide financing to political subdivisions for the removal of abandoned underground storage tank systems.

Mr. Hills reported that five vendors were selected to perform responsible party searches of properties with petroleum UST releases. He said that 77 responsible party search files were distributed to the vendors and 17 of the files had been returned. He said a total of 110 files would be distributed to the vendors for the project. He noted the responsible party search expenditures, which are being paid for by a federal LUST award of \$98,000, must be incurred prior to June 30, 2014.

Mr. Hills said on March 25 and 26, 2014, the State Fire Marshal will host an underground storage tank installer seminar for Region 5 of the U.S. EPA. He said installers and inspectors from the six states that make up Region 5 are expected to attend.

Mr. Hills stated that both the OTTER (Ohio Tank Tracking & Environmental Regulations) database and Click Scheduling have been operating with no major problems. Click Scheduling is a GPS driven computer program that geographically schedules the inspectors to visit facilities that are located in the same geographical area.

Mr. Hills reported for the week ending March 7, 2014, there were 53 new inspections performed for a total of 2,385 inspections for the three-year inspection cycle ending June 30, 2016. He said that 14 NFAs (no further actions) were generated during this same time period for a total of 261 for the grant cycle ending September 30, 2014.

Mr. Hills stated that, as of March 10, 2014, there were 21,962 registered USTs, and 3,725 owners of 7,497 registered facilities.

Mr. Hills said on March 19, 2014, there was an unveiling and dedication ceremony of a permanent State Fire Marshal exhibit at the Ohio Statehouse. He said many past State Fire Marshals attended the ceremony along with members of the Ohio Fire Chief's Association. He noted the display is located on the ground level outside the Museum Gallery.

Financial Report:

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

Mr. Leasor reported that the Auditor of State's Office posted the Board's request for proposal (RFP) on its bid list from March 1 through March 14 and three firms expressed interest in receiving the RFP. He said a pre-proposal conference will be held on March 25, 2014, for those firms. The firms have until April 4, 2014, to submit proposals to the Auditor of State.

January Financials

Mr. Leasor said the January 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 that, as of March 19, 2014, the unobligated balance was \$18.7 million. He said this included \$12.7 million in STAR Ohio and the \$6 million invested in US treasuries and US agency callable bonds. He reported the balance in the obligated account was approximately \$4.7 million as of March 19, 2014.

Mr. Leasor stated the claims expense for January was approximately \$187,000. He noted that checks for an additional \$453,000 were requested prior to January 31, 2014, but the checks were not issued until February 3, 2014, causing the claims expense for January to appear low. He reported that, as of March 19, 2014, \$4.3 million has been paid for claims for fiscal year 2014.

Mr. Leasor reported that, as of January 31, 2014, approximately 98% of the budgeted revenues net of refunds, had been collected. He said information on refunds and fee collections by the Attorney General's Office would be presented with the compliance and fee assessment report.

Mr. Leasor stated that the total operating expenses for January were \$128,000. He said that, as of January 31, 2014, postage expense was 69% of the amount budgeted. He said this is due to postage fees for the final quarter of fiscal year 2013 being paid in July of fiscal year 2014. He said these charges include fees for the annual fee statement mailing which is sent by certified mail.

Mr. Leasor pointed out that as of January 31, 2014, the expenses for temporary personnel services, printing and postage, advertising and travel were below the anticipated expenditure amounts for this time in the fiscal year. He noted that projects were forthcoming that will bring the budgeted expenses closer in line to their budgeted amounts by the June Board meeting.

Mr. Leasor said all other expenses were 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 that, as of February 28, 2014, \$70,565 in refunds were paid for program year 2013. She said this amount represents about 28% of the refund goal of \$250,000 that was set for the program year. She said there were 3,025 refunds pending which totals \$1.4 million.

Ms. Esquivel stated that, as of February 28, 2014, a total of \$81,425 was used this program year to offset prior year outstanding fees.

Ms. Esquivel said that after deducting the collection costs, a total of \$129,985 had been collected by the Attorney General's Office and Special Counsel so far this program year.

Ms. Esquivel stated that, as of February 28, 2014, 272 accounts totaling \$1,154,822 had been certified to the Attorney General's Office for collection. She noted that this would be the total amount certified for program year 2013. She said the next certification would occur in late fall of 2014, and would include the 2014 program year's fees.

Ms. Esquivel stated that seven Orders Pursuant to Law were under appeal. She said six were under review and one hearing is scheduled. She said that two Determinations to Deny a Certificate of Coverage were also under appeal and were under review.

Ms. Esquivel said that three Ability to Pay Applications were 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 3,136 Certificates of Coverage had been issued for program year 2013.

Ms. Esquivel stated that there were no changes to the unclaimed monies and refunds pending statistics since the Board's January meeting.

Vice-Chairman Hull questioned whether there was something about the pending refunds that caused the low percentage of the refund goal to be paid at this point in the program year. Ms. Esquivel responded noting that historically the processing of refunds has accelerated in the second half of the program year.

Ms. Esquivel said that many of the high dollar refunds were paid in previous program years, leaving mostly lower dollar refunds which are spread over numerous owners. She said there are some high dollar refunds associated with larger owners, but their accounts are significantly more difficult to reconcile. She said processing a refund requires a complete review and reconciliation of the owner's account, along with any other accounts associated with the tank system going back to 1989. She said that the staff has also been focusing on processing older refunds, but it has become very difficult for the staff to obtain information necessary to fully process the older refunds.

Ms. Esquivel said she looks at the total number of owners paid refunds in addition to the dollar amount of the refunds paid. She said she anticipates refunds will be paid to 200 owners by the end of the program year, which is comparable to previous years.

Vice-Chairman Hull noted that in each successive program year, it appears additional work is required in order to issue a refund, making it more difficult for the staff to reach the refund goal of \$250,000, and he suggested the goal be reduced in the upcoming program year. Ms. Esquivel agreed.

Claims Report:

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

Ms. Duann reported that, as of March 3, 2014, 1,776 claims were pending review, which was a decrease of seven claims from the Board's February meeting. She said a total of 20 claim settlement determinations were under appeal.

Ms. Duann reported that the number of claims received for program year 2013 has increased by about 25% in comparison to previous years' statistics. She said that in February, 57 claims were received and 63 claims were settled. She noted the staff also closed 23 below deductible claims for which a determination of no further action had been issued for the release more than one year ago.

Ms. Duann said, the total claim settlement offer thus far for this program year was just under \$4.2 million. She anticipates a total claim settlement offer of approximately \$6.5 million for this program year.

Ms. Duann reported that for the last eight months, an average of 19% of the total claim face value had been disallowed. She said the top two reasons for disallowed costs were late-filed costs and excessive costs which accounted for 20% and 18% of the disallowed costs respectively. She said less than 1% of the claim packages included late-filed costs, but the disallowed amounts for these claim packages were huge.

Chairman Rocco said, when looking at the dollar value of claims paid this program year in comparison to previous years, it appears the face value of the claims is going down. Ms. Duann noted that high dollar claims were still being received, but the staff has been settling more claims for small to mid-size owners due to the ongoing subrogation litigation with the major oil companies.

Ms. Duann reported that in February, seven eligibility applications were received, and four eligibility applications were approved. She said that, as of March 3, 2014, 11 eligibility applications were pending review and three eligibility determinations were under appeal.

Ms. Duann said in February, 19 requests for cost pre-approval had been received, and in this same month, 17 cost pre-approval notifications had been issued. She said that 40 cost pre-approval requests were currently pending review.

Old Business:

Rules Adoption

Chairman Rocco stated that the proposed amendment to rule 3737-1-04 to reduce the annual Financial Assurance Fund fee from \$600 per tank to \$500 per tank was put on JCARR's (Joint Committee on Agency Rule Review) consent agenda and a hearing was conducted. No testimony or comments were made at the hearing.

Chairman Rocco requested a motion to adopt the proposed amendment to rule 3737-1-04 of the Ohio Administrative Code as presented at the public hearing of the Board on February 19, 2014, with an effective date of April 1, 2014. Vice-Chairman Hull so moved. Mayor Kuchta seconded. Following a voice vote, the Executive Director called the roll, and the following members voted in the affirmative: Messrs. Rocco, Hull, Kuchta, Stephenson, Hills, Geyer and Field. There were no nays. The motion passed.

Legal Update

Chairman Rocco called upon Assistant Attorney General, Carla Dowling-Fitzpatrick, to provide an update on the status of the Board's current court actions.

Ms. Dowling-Fitzpatrick stated that the Board becomes involved in many types of court actions including administrative actions, foreclosure actions, joint enforcement actions, third-party claims, extraordinary writs and subrogation claims.

Ms. Dowling-Fitzpatrick said that the Board intervenes in foreclosure actions when the tank owner has failed to pay Fund fees. She said the intent of intervening in foreclosure actions is to provide notice to the future tank owner of any outstanding Fund fees associated with tank systems located on the property that is the subject of the foreclosure action. She noted the fees assessed by the Board transfer to the entity that purchases the property.

Ms. Dowling-Fitzpatrick said during the past year, there were discussions of whether intervening in foreclosure actions has had the intended effect, and whether there is sufficient benefit to justify the work involved in intervening in these cases. She said as a result of these discussions, the Board has not engaged in these types of actions as frequently as it had in the past.

Ms. Dowling-Fitzpatrick provided a brief summary of the Kerger & Hartman, et al. vs. Mohamad Ajami, et al. foreclosure case noting that the case resulted from the Kerger & Hartman institution filing a foreclosure action against Mr. Ajami in order to seek compensation for legal services. She said the Board intervened and filed the necessary pleadings in order to provide notice of the outstanding Fund fees.

Ms. Dowling-Fitzpatrick said the second type of actions the Board deals with are joint enforcement actions. She said in these cases the Board joins the Environmental Enforcement Section of the Attorney General's Office to jointly file complaints with the goal of compelling compliance with the State Fire Marshal's rules and statutes for petroleum underground storage tanks and for the Board to collect any outstanding Fund fees. She said there are a number of these actions currently being monitored.

Ms. Dowling-Fitzpatrick said the third type of actions are third-party claim cases. She said a third-party complaint arises when a release occurs and a plaintiff third party believes he has been harmed and sues the tank owner. She said if the tank owner is granted eligibility under the Fund, the Fund will cover the loss as provided for in the Board's statutes and administrative code provisions.

Ms. Dowling-Fitzpatrick said there is currently a third-party lawsuit known as Alessandra Riscatti, et al. vs. Prime Properties Limited Partnership, et al. involving the Board in which 99 plaintiffs are seeking compensation for damages. She said that the Board has been working with Prime Properties' defense counsel to determine the extent of damages that might be appropriate to reimburse.

Ms. Dowling-Fitzpatrick said another third-party complaint involves Spee-D-Foods. She said during an environmental site assessment, a Holiday Inn found its property to be contaminated and the owner is seeking compensation from Spee-D-Foods for the costs to evaluate and trace the source of the contamination.

Ms. Dowling-Fitzpatrick said extraordinary writs would be discussed during the executive session portion of the meeting.

Ms. Dowling-Fitzpatrick said the last category of court actions are subrogation cases. She said subrogation cases typically occur when a third party, such as a contractor performing work on an underground storage tank system, causes or contributes to the release of petroleum. She said, in these cases, the tank owner is entitled to seek reimbursement from that third party for any costs incurred for the loss of business, bodily injury, property damage and cleanup of the release. If the owner is deemed eligible to claim reimbursement for corrective action costs under the Fund, the Board has the statutory right to recover from the party that caused or contributed to the release any costs that have been or will be reimbursed to the owner out of the Fund.

Ms. Dowling-Fitzpatrick provided a brief summary of the M & A & Sons LLC vs. Santmyer Oil Company case. She said in this case there was a tank overfill which resulted in a large release. She said the court granted the Board's motion to intervene, which had been filed in order to preserve the Board's subrogation rights. She said the case is set for trial, but after speaking with opposing counsel, Waxman Blumenthal LLC, she believes the matter can be settled through

negotiation. She said a motion was necessary in order to move forward with negotiations with opposing counsel.

Chairman Rocco requested a motion to authorize the Chairman in consultation with the Executive Director and Assistant Attorney General to make any and all decisions necessary with respect to the negotiation and development of a settlement agreement among the parties in the subrogation case of M & A & Sons LLC et al. vs. Santmyer Oil Company Inc. et al., including, but not limited to, the terms of the agreement and acceptance or rejection of any offers to settle the claim. Vice-Chairman Hull so moved. Mr. Geyer seconded. A vote was taken and all members voted in the affirmative. The motion carried.

New Business:

Finance Committee

Chairman Rocco said the Finance Committee met prior to the Board meeting to discuss a number of issues.

Chairman Rocco reminded the members that in the previous fiscal year the Board authorized the investment of \$6 million from the unobligated STAR Ohio account into U.S. treasuries and U.S. agency callable bonds. He said \$3 million was invested in each of the investment vehicles and they were laddered with one, two and three-year terms. He said the one-year investments had matured, and the Finance Committee had met in order to determine whether to reinvest this \$2 million. He said the committee agreed that the investments should be rolled over with \$1 million reinvested in U.S. treasuries and \$1 million reinvested in U.S. agency callable bonds, each with three-year terms. He noted that the interest rates for the U.S. treasuries and U.S. agency callable bonds were slightly higher than the previous year, and the rates were significantly higher than the interest rate of STAR Ohio.

Chairman Rocco said the committee also discussed the investment of additional monies from the unobligated STAR Ohio account. He said the committee looked at the anticipated revenues for fiscal years 2014 through 2018 based upon the reduced per-tank fees, and the Board's cash flow needs and determined an additional \$2 million could be invested from the STAR Ohio account without impacting the ability to reimburse claims.

Vice-Chairman Hull noted that the Finance Committee had previously recommended hiring an additional claims analyst with the intent of accelerating the rate of claim reimbursement. He said even if the additional claims analyst position is approved, \$2 million could be invested from STAR Ohio without impacting the ability to pay out claims at the faster rate. He said the budget could accommodate both the addition of another claims analyst as well as the investment of the additional \$2 million.

Chairman Rocco stated that the investments are scheduled to generate about \$15,000 in interest earnings during fiscal year 2014, and the interest earnings are being moved to the STAR Ohio account.

Chairman Rocco asked if there were any questions or further discussion, and there was none. He then requested a motion to approve the investment of the \$2 million, and to authorize the Executive Director and the Chief Fiscal Officer to place \$1 million from the unobligated account

into U.S. treasuries and an additional \$1 million from the unobligated account into U.S. agency callable bonds with maturity dates of three years; and to reinvest these funds in like securities upon maturity. Vice-Chairman Hull so moved. Mayor Kuchta seconded. A vote was taken and all members voted in the affirmative. The motion passed.

Certificates of Coverage – Ratifications:

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

Ms. Richmond said that behind Tab 8 are listings of facilities that, since the February Board meeting, have been issued or denied a program year 2013 Certificate of Coverage. She stated no 2012 program year Certificates of Coverage had been issued or denied since the Board's February meeting.

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 discovered, 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 2013 program year Certificates of Coverage for the 37 facilities included on the list behind Tab 8.

Vice-Chairman Hull moved to ratify the issuance of the 2013 Certificates of Coverage for the facilities listed. Mr. Geyer seconded. A vote was taken and all members voted in the affirmative. The motion passed.

Ms. Richmond requested the Board ratify her actions with respect to the denial of the 2013 program year Certificates of Coverage for the 42 owners of 45 facilities included on the list behind the Tab 8 green divider page.

Vice-Chairman Hull moved to ratify the denial of the 2013 Certificates of Coverage listed. Mr. Hills seconded. A vote was taken and all members voted in the affirmative. The motion passed.

Executive Session:

Chairman Rocco requested a motion to enter into executive session with counsel pursuant to O.R.C. 121.22(G)(3) to discuss matters of pending or imminent court action. Vice-Chairman Hull so moved. Mayor Kuchta seconded. Chairman Rocco called for a roll call. The following members voted in the affirmative: Messrs. Rocco, Hull, Kuchta, Stephenson, Hills, Geyer and Field. There were no nays. The motion passed.

Prior to moving into executive session, Chairman Rocco requested to be recused from a portion of the executive session. Chairman Rocco turned the meeting over to Vice-Chairman Hull.

Reconvene Meeting

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

Rules Committee Meeting and Confirm Next Meeting and Adjourn:

Chairman Rocco said the Rules Committee has been reviewing the Board's rules as part of the five-year rule review process, and would be meeting at 12:30 p.m. following a short break. He said there would be some issues with respect to the rules that would be discussed, and he welcomed the public to attend that meeting as well.

Chairman Rocco stated that the next Board meeting will be held on Wednesday, June 11, 2014, at 10:00 a.m.

Vice-Chairman Hull made a motion to adjourn the meeting and Mayor Kuchta seconded. All were in favor.