



Petroleum Underground Storage Tank Release Compensation Board

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MINUTES OF THE 168th MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD March 15, 2017

BOARD MEMBERS IN ATTENDANCE

John Hull
Don Bryant
Ron Falconi
Scott Fleming
Tom Stephenson

EX-OFFICIO MEMBERS IN ATTENDANCE

Bill Hills, representing Director Jacqueline Williams, Ohio Department of Commerce
Chris Geyer, representing Director Craig Butler, Ohio Environmental Protection Agency
J.D. Pisula, representing Josh Mandel, State Treasurer of Ohio

OTHERS IN ATTENDANCE

Madelin Esquivel	Assistant Director, PUSTRCB
Don Leasor	Chief Fiscal Officer, PUSTRCB
Cindy Duann	Claims Supervisor, PUSTRCB
Jonathan Maneval	Administrative Coordinator, PUSTRCB
John Hickey	Fiscal Specialist, PUSTRCB
Val Gatallin	Environmental Claims Analyst, PUSTRCB
Jennifer Croskey	Assistant Attorney General
Dan Adams	ATC Group Services LLC
Doug Darrah	ATC Group Services LLC
Justin Wilde	BJAAM Environmental, Inc.
Sean Hetrick	BJAAM Environmental, Inc.

Minutes submitted by:


Jonathan Maneval
Administrative Coordinator

Call to Order:

Vice-Chairman Hull convened the one hundred sixty-eighth meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, March 15, 2017.

The following members were in attendance: John Hull; Don Bryant; Ron Falconi; Scott Fleming; Tom Stephenson; Bill Hills, representing Director Jacqueline Williams, Ohio Department of Commerce; Chris Geyer, representing Director Craig Butler, Ohio Environmental Protection Agency; and J.D. Pisula, representing Josh Mandel, State Treasurer of Ohio.

The following member was not present: Jim Rocco.

Minutes:

Vice-Chairman Hull asked if there were any comments or questions regarding the minutes from the January 18, 2017 Board meeting, and there were none. Mr. Hills moved to approve the minutes. Mr. Bryant seconded. A vote was taken and Messrs. Bryant, Fleming, Stephenson, Hills, Hull, Geyer and Pisula voted in the affirmative. Mayor Falconi abstained. The minutes were approved as presented.

BUSTR Report:

Vice-Chairman Hull called upon Bill Hills, Bureau Chief, to present the Bureau of Underground Storage Tank Regulations' (BUSTR) report.

Mr. Hills reported that intermittent employees are still being used as file room clerks.

Mr. Hills said the vendors have completed about 126 of the 184 responsible party search cases being researched for this fiscal year. He said he expects the remaining cases to be completed by June 30, 2017. The program is used to identify underground storage tank (UST) owners and operators responsible for the investigation and cleanup of petroleum releases.

Mr. Hills reported that 19 grants totaling over \$3.5 million had been awarded through the Abandoned Gas Station Cleanup Grant Program. The program is administered by the Ohio Development Services Agency, in partnership with the Ohio EPA and BUSTR, and has \$20 million available to local government entities to be used for the cleanup of abandoned gas station sites. He noted that in order to be eligible for funding, the site must be classified by BUSTR as "Class C", meaning there is no viable owner able to pay for cleanup costs.

Mr. Hills said a meeting with stakeholders concerning the draft administrative rule amendments was held in the month of December, and comments were incorporated into the rules. He said the proposed rule amendments were approved by the State Fire Marshal, and are currently under review by the Director of the Department of Commerce and her Chief Legal Counsel. He said once the Director signs off on the amendments they will be submitted to the Common Sense Initiative Office.

Mr. Hills reported for the week ending March 3, 2017, there were 78 new inspections performed for a total of 3,065 inspections for the three-year inspection cycle ending June 30, 2019. He said that 15 NFAs (no further actions) were generated during this same time period, for a total of 216 NFAs for the grant cycle ending September 30, 2017.

Mr. Hills said there is a typographical error in the report and that as of March 3, 2017, there were 21,559 registered USTs. He said there were 3,632 owners of 7,277 registered facilities.

Financial Reports:

Vice-Chairman Hull called upon Don Leasor, Chief Fiscal Officer, to present the financial reports.

Audit Update

Mr. Leasor said the Independent Auditor's Report for the year ending June 30, 2016, had been distributed to each member. He said the audit was filed with the Auditor of State prior to the January 31, 2017 submission deadline. He explained that the report had been reviewed and accepted by that office, and it was released to the public on March 9, 2017.

Vice-Chairman Hull asked if there were any significant changes to the audit report from what was presented at the previous meeting. Mr. Leasor said no significant changes were made, and pointed out that, as expected, Kennedy Cottrell Richards issued a clean or unmodified opinion on the financial statements, meaning the Board's financial statements are stated fairly in accordance with generally accepted accounting principles. He said Kennedy Cottrell Richards also found no issues with internal controls, material weaknesses or significant deficiencies to report. Vice-Chairman Hull commended the staff for a job well done.

December and January Financials

Mr. Leasor said the December and 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, as of March 14, 2017, the unobligated account balance is \$25.6 million. He said this amount includes \$11.6 million in STAR Ohio and the custodial account, and \$14 million invested in U.S. treasuries and U.S. agency callable bonds. He said at the June 2016 meeting \$9 million was obligated for the payment of claims and the obligated account balance as of March 14, 2017, is \$3.7 million.

Mr. Leasor said that, as of January 31, 2017, expenses should be around 58.3% of the amount budgeted for the fiscal year. He said the claims expense for the month of January was \$409,000, and to date, approximately \$5.3 million had been paid for claims for fiscal year 2017.

Mr. Leasor reported, as of January 31, 2017, approximately 101% of the budgeted revenues net of any refunds had been collected.

Mr. Leasor reported that operating expenses for the month of January were \$152,000. He pointed out that, as of January 31, 2017, postage expense was 74% of the amount budgeted. He said this was due to postage fees for the final quarter of fiscal year 2016 being paid in the first quarter of fiscal year 2017. He said these charges include fees for the annual fee statement mailing, which is sent by certified mail.

Mr. Leasor said all other expenses are at or below where they should be at this time in the fiscal year. He explained that salaries were 6.5% below the budgeted amount due to a position vacancy. He pointed

out that temporary services were 17% below the budgeted amount, but noted that a temporary service employee will be used to fill the vacant office assistant position at the end of the fiscal year when the volume of calls being received increases following the mailing of the annual fee statements. Vice-Chairman Hull asked whether any additional temporary employees would be needed to assist with the move. Mr. Leasor said that he didn't believe any temporary employees would be used, and explained that the movers and other services that will be needed will fall under legal and professional expenses.

Mr. Leasor said office supplies were about 5.7% below the budgeted amount, and that he expects these costs will increase in preparation of the office move. He said printing and copying expenses were 38% below the budgeted amount. He said that a major portion of the printing and copy costs are related to the mailing of the annual fee statements, which occurs in the fourth quarter of the fiscal year. He noted that a notification concerning the move would be printed and mailed to tank owners and other stakeholders.

Mr. Leasor said legal and professional expenses were 8.8% below the budgeted amount. He said these expenses will increase as a result of the move, and that he believes there are sufficient funds available under this line item to cover the anticipated moving costs. Mr. Leasor reported that travel expenses were 26.8% below the amount budgeted. He said monies were included in the budget for litigation related travel expenses. However, very little of the anticipated travel costs had been incurred. He stated employee expenses were 9.2% below the budgeted amount due to staff vacancies. He said telephone expenses were 6% below the budgeted amount.

Vice-Chairman Hull asked if there was sufficient money in the budget to cover the costs to relocate the office. Mr. Leasor said the total move expenses are estimated to be about \$60,000. He explained that a portion of those costs are for new furniture, which will be addressed later in the meeting. He said he believes the remaining costs should be covered because many of the operating expenses are currently under budget.

Compliance and Fee Assessment Report:

Vice-Chairman Hull called on Madelin Esquivel, Assistant Director, to present the compliance and fee assessment report.

Ms. Esquivel reported, as of February 28, 2017, refunds totaling \$19,463 had been paid to 15 owners for the 2016 program year, which began July 1, 2016. She said a total of \$34,192 was used to offset prior years' outstanding fees. She said the combined amounts total \$53,655, which represents 24% of the \$225,000 refund goal set for the 2016 program year.

Ms. Esquivel said, as of February 28, 2017, a net total of \$145,727 had been collected by the Attorney General's Office and Special Counsel. She said, as of February 28, 2017, 22 owners' accounts totaling \$129,035 had been certified to the Attorney General's Office for collection. She said, earlier in the current month, an additional \$683,300 had been certified for collection. She noted that this recent certification included unpaid 2016 program year's fees.

Ms. Esquivel said three Orders Pursuant to Law are currently under appeal. She said one appeal is in settlement negotiation and information to support the other two appeals is expected to be provided.

She said one Determination to Deny a Certificate of Coverage was under appeal and information to support the appeal is expected to be provided.

Ms. Esquivel reported that four Ability to Pay Applications are pending review. The Ability to Pay program allows former UST owners experiencing financial difficulty to apply for and receive a determination of their ability to pay delinquent fees.

Ms. Esquivel reported that 2,978 Certificates of Coverage had been issued as of February 28, 2017. She said this amount represents 93% of the total Certificates that were issued in the previous year, which would indicate most the Certificates expected to be issued for the program year have been issued. She said there are 110 Applications for Certificates of Coverage currently being processed, 39 unresolved Pending Denials and 74 unresolved Determinations to Deny a Certificate of Coverage.

Ms. Esquivel stated that there are 50 uncashed refund checks that total \$38,897. She said the reporting of refunds for which more information was requested has changed. She explained that when more information is needed in order to process a refund, two requests are sent via certified mail. She said if no response is received, those refunds will be moved to a new No Response category. She said when she reviewed the refunds for which more information had been requested, there were 23 refunds totaling \$26,935 for which no response has been received. She said there are nine owners with refunds totaling \$10,390 who are still in the process of being mailed the two notifications.

Vice-Chairman Hull asked, historically, what percentage of owners respond to the second notice when they did not respond to the initial request for more information. Ms. Esquivel said it's a small percentage, and commented that the likelihood of receiving a response from individuals that owned the tanks in the early 1990's is slim. She said in order to bring a resolution to the pending refunds associated with owners that don't respond to the requests for more information, the goal is to ultimately reverse the refund and reapply the monies to the fee statement so the money is no longer included in the pending refund amount. Vice-Chairman Hull asked if at some point that money might be placed back into the pending refunds. Ms. Esquivel said if the owner provides information to demonstrate the refund is valid, then the refund would be paid out to the owner.

Claims Reports:

Vice-Chairman Hull called upon Cindy Duann, Claims Supervisor, to present the claims reports.

Ms. Duann said, as of March 1, 2017, the total maximum liability of in-house open claims has dropped below \$30 million. She said that, using the historical claim payout ratio of 75%, the actual anticipated claim liability of unpaid in-house claims is about \$22 million.

Ms. Duann said, with the exception of claims submitted under hardship status, the staff is currently reviewing and settling claims that were received in the month of December 2016. She noted the claims submitted by owners that have been granted hardship status are typically reviewed within 30 days.

Ms. Duann reported, as of March 1, 2017, there were 14 claim settlement determinations under appeal. She said, since the January meeting, six claim settlement appeals had been resolved, and four new objections to claim settlement determinations had been received. She said a hearing was held for one

appeal and a hearing has been scheduled for three other appeals. She said three responses had been issued concerning appeals for which additional information had been provided by the appellants, and additional information provided for two other appeals was under review. She said the staff is making progress to resolve claim settlement appeals.

Ms. Duann reported that, in the month of January, 34 claim applications were received and 71 claims were settled, and in the month of February, 53 claim applications were received and 83 claims were settled. She said, as a result, the number of claims pending review reduced by 67 during these two months.

Ms. Duann stated, for the last eight months, the total claim settlement offer was \$4.7 million for the settlement of 519 claims, and the average per claim payout was about \$9,000. Ms. Duann reported that the average claim payout ratio was about 78% of the net value, and pointed out that this is slightly higher than the historical average of 75%.

Ms. Duann said, in the month of January, 11 eligibility applications were received and eight determinations were issued, and in the month of February, 10 eligibility applications were received and six determinations were issued. She said, as of March 1, 2017, a total of 33 eligibility applications were pending review and seven determinations to deny eligibility were currently under appeal. She said hearings had been scheduled for two of the appeals, and information has been received in support of four appeals and is under review.

Ms. Duann stated, in the last eight months, a total of 97 requests for cost pre-approval have been received, and 91 cost pre-approval notifications were issued. She said, as of March 1, 2017, a total of 43 cost pre-approval requests were pending review, and she noted the staff is in the process of discussing and negotiating a contract O&M (operation and maintenance) price with a consultant for a few RAP (Remedial Action Plan) cost pre-approval requests. She explained that the contract price is being negotiated because the staff is seeing poor system operation, with low efficiency, and high O&M costs. Vice-Chairman Hull asked whether these RAP requests include purchases of remediation systems. Ms. Duann explained that for some of the sites, treatment systems have already been purchased, but because the systems are older, they are contemplating the authorization of the purchase of five replacement units.

Unfinished Business:

Office Lease

Vice-Chairman Hull called upon Don Leasor, to discuss the office lease.

Mr. Leasor said behind Tab 6 is a summary of the properties being considered for the Board's future office space. The summary presented the base rent, operating expenses and parking costs for the Board's current space in the LeVeque Tower along with properties located at 355 E. Campus View Boulevard, Columbus and 4151 Executive Parkway, Westerville. He said based on certain assumptions, the rental, operating and parking costs were estimated for a six-year period in order to provide a cost comparison between the properties.

Vice-Chairman Hull asked how increases to the operating expense for the Campus View Boulevard property would be calculated since the expense had been included in the base rent. Mr. Leasor responded that operating expenses were an estimate based on costs at similar facilities. Mr. Geyer questioned what expenditures are included in the operating expense. Mr. Leasor expressed that this information was not available to him as he was not part of the discussions.

Vice-Chairman Hull asked if the landlords had offered a budget for building improvements. Mr. Leasor explained that the allowance for tenant improvements was \$25 per square foot for the Executive Parkway location and \$18 per square foot for the Campus View Boulevard location. He noted that the landlord of the property at Campus View Boulevard had raised some concerns that the floor may be structurally unable to support the weight of the Board's files.

Mr. Bryant asked when a decision would need to be made, and Vice-Chairman Hull said the decision would be made quickly as the move would need to occur in the month of June. Ms. Esquivel explained that the Chairman and Executive Director are leaning towards relocating the office to the Executive Parkway location. She noted that a lease agreement is currently being prepared and she expects it will go to the Attorney General's Office for their review and approval soon.

Vice-Chairman Hull said the staff had done an assessment of the existing office equipment, furniture and fixtures and estimated that an additional \$35,000 would be needed in order to properly furnish the new space. He said if this meets the Board's approval, then a motion to increase the capital budget by \$35,000 was needed. Mr. Stephenson so moved and Mr. Fleming seconded. A vote was taken and all members voted in the affirmative. The motion passed.

Certificates of Coverage – Ratifications:

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

Ms. Esquivel said the lists behind Tabs 7 and 8 are listings of facilities that, since the January Board meeting, had been issued or denied a program year 2015 or 2016 Certificate of Coverage.

Ms. Esquivel 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. Esquivel explained that if deficiencies or compliance issues are identified, notice is provided to the owner in accordance with the Board's rules. The owner is provided 30 days to respond to the notice with information to correct the deficiency or compliance issue. If correcting information is not received within this time, a determination denying the Certificate of Coverage is issued to the owner.

She said the Board's rules and the Revised Code make provisions for an appeal of the determination. Ms. Esquivel 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. Esquivel requested the Board ratify the issuance of the 2015 program year Certificates of Coverage for the six facilities included on the list behind Tab 7.

Mr. Fleming moved to ratify the issuance of the 2015 Certificates of Coverage for the facilities listed. Mr. Geyer seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Esquivel stated that no 2015 program year Certificates of Coverage had been denied since the January meeting.

Ms. Esquivel requested the Board ratify the issuance of the 2016 program year Certificates of Coverage for the 180 facilities included on the list behind Tab 8.

Mr. Geyer moved to ratify the issuance of the 2016 Certificates of Coverage for the facilities listed. Mayor Falconi seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Esquivel requested the Board ratify the denial of the 2016 program year Certificates of Coverage for the 50 facilities included on the list behind the Tab 8 green divider page.

Mr. Hills moved to ratify the denial of the 2016 Certificates of Coverage that were listed. Mr. Geyer seconded. A vote was taken and all members were in favor. The motion passed.

Executive Session:

Vice-Chairman Hull requested a motion to enter into executive session with counsel pursuant to Ohio Revised Code 121.22(G)(3) to discuss matters of pending or imminent court action. Mr. Hills so moved. Mr. Fleming seconded. Vice-Chairman Hull called for a roll call. The following members voted in the affirmative: Messrs. Bryant, Falconi, Fleming, Geyer, Hills, Hull, Pisula, and Stephenson. There were no nays. The motion passed.

During the executive session, Mr. Fleming requested to be recused from a portion of the executive session and left the meeting.

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

Confirm Next Meeting and Adjourn:

Vice-Chairman Hull reminded members that Financial Disclosure Statements must be filed by May 15, 2017. He noted that the statements can be mailed in or filed online.

Vice-Chairman Hull pointed out that three seats on the Board are currently vacant, and invited the members to recommend individuals to be considered for appointment. The vacancies include a representative of petroleum marketers, a representative of businesses that own USTs, and a professional engineer with geology experience who represents the interests of the public that is not associated with the petroleum industry. It was noted that because five of the members are affiliated

with the Republican party, any individual to be considered for appointment must be affiliated with another political party.

Vice-Chairman Hull said that the next Board meeting will be held on Wednesday, June 14, 2017, at 10:00 a.m. in the Board's current office in the LeVeque Tower. He then adjourned the meeting.