



Petroleum Underground Storage Tank Release Compensation Board

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MINUTES OF THE 193rd MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD March 16, 2022 – 10:00 a.m.

BOARD MEMBERS IN ATTENDANCE

Jim Rocco
John Hull
Steve Bergman
Don Bryant
Larry Burks
Scott Fleming
Dan Ridi
Tom Stephenson

EX-OFFICIO MEMBERS IN ATTENDANCE

Steven Krichbaum, representing Director Sheryl Creed Maxfield, Ohio Department of Commerce
Donna Waggener, representing Director Laurie Stevenson, Ohio Environmental Protection Agency
Michael Lenzo, representing Robert Sprague, State Treasurer of Ohio

OTHERS IN ATTENDANCE

Starr Richmond	Executive Director, PUSTRCB
Madelin Esquivel	Assistant Director, PUSTRCB
Don Leasor	Chief Fiscal Officer, PUSTRCB
Hannah Brame	Claims Supervisor, PUSTRCB
Jonathan Maneval	Executive Assistant, PUSTRCB
Natasha Natale	Assistant Attorney General
Doug Darrah	ECS Midwest, LLC
Michael Baker	BJAAM Environmental, Inc.
Dan Adams	Atlas Technical Consultants
Alex Boehnke	Ohio Energy & Convenience Association
Claire Linkhart	API Ohio
Jeremy Fultz	Evergreen Resources Group, LLC

Minutes submitted by:


Jonathan Maneval
Executive Assistant

Mr. Leasor reported the legal and professional expenses were at [70.6%] of the amount budgeted. He explained that these expenses include fees for the Assistant Attorney General services for the fourth quarter of fiscal year 2021 and the first quarter of fiscal year 2022. He said it also includes payment for the annual audit and the services of the actuarial firm used to assist with the estimate of the unpaid claims liability. He said all other expenses are at or below where they should be at this time in the fiscal year.

Mr. Burks asked if the Board has an investment policy and commented that recent changes to the Revised Code may allow the Board to utilize new types of investments, such as a local government bond. Mr. Leasor confirmed that the Board has an investment policy, which is reviewed annually by the Finance Committee for any revisions that may be needed. Mr. Leasor explained that most of the Board's moneys are in STAR Ohio and investments in U.S. treasuries and bonds. Chairman Rocco said, if the investment options have changed, there may be a value in looking at what those additional options are. Vice-Chairman Hull said the Board holds investments in three-year treasury bills until maturity because of the unearned gains and losses in the bond market. He pointed out that the value of those investments would be exposed to market fluctuations if they were to be moved into a 30-year bond. Mr. Lenzo confirmed that the General Assembly made changes to the allowable investments for state agencies and said the State Treasurer's Investment Director could discuss those investment options and assist with exploring the different investments that would be most useful for the Board. Mr. Burks said he believed there are commercial paper investment options with nine and 12 month terms, which provide a slightly higher rate of return but the risk is essentially the same. After some further discussion, the Chairman called for a Finance Committee meeting prior to the Board's June meeting to discuss the alternative investment options.

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 refunds totaling \$23,656 had been paid to 24 owners for program year 2021 and noted the amount of pending refunds totals \$1,502,856. She said \$2,800 of pending refunds had been used to offset outstanding fees this program year. She said since July 1, 2021, the fees collected by the Attorney General's Office and Special Counsel less collection costs totaled \$56,352. She reported that, since July 1, 2021, outstanding fees for 120 accounts totaling \$417,050 had been certified to the Attorney General's Office for collection.

Ms. Esquivel said there are three Orders Pursuant to Law currently under appeal and information to support the objections is expected. She said one Determination to Deny a Certificate of Coverage was under appeal and information to support the appeal was received and is under review.

Ms. Esquivel stated that no 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, as of March 2, 2022, Certificates of Coverage had been issued to 2,803

Call to Order:

Chairman Rocco convened the one hundred ninety-third meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, March 16, 2022. Acting under the authority of Section 3 of Substitute House Bill Number 51, effective February 17, 2022, the public meeting was conducted via a ZOOM audio/visual conference call.

The following members were in attendance: Jim Rocco; Steve Bergman; Don Bryant; Larry Burks; Scott Fleming; John Hull; Dan Ridi; Tom Stephenson; Steven Krichbaum, representing Director Sheryl Creed Maxfield, Ohio Department of Commerce; Donna Waggener, representing Director Laurie Stevenson, Ohio Environmental Protection Agency; and Michael Lenzo, representing Robert Sprague, State Treasurer of Ohio.

Minutes:

Chairman Rocco asked if there were any comments or questions regarding the minutes from the January 12, 2022 Board meeting and there were none. Mr. Burks moved to approve the minutes and Mr. Bergman seconded. A vote was taken and all were in favor. The minutes were approved as presented.

BUSTR Report:

Chairman Rocco called upon Steven Krichbaum, Bureau Chief, to present the Bureau of Underground Storage Tank Regulations' (BUSTR) report.

Mr. Krichbaum reported that six positions are currently open at BUSTR and they are working through the process of posting and interviewing those positions. He commented that the hope is to be fully staffed by the middle of the year. He noted that Jason Anthony and Ralph Mertz were promoted internally to environmental supervisor positions. He noted that under the current circumstances with COVID-19, most of BUSTR's personnel is currently teleworking but they plan to bring the staff back into the central office three days a week starting in April.

Mr. Krichbaum said, in the next two months, BUSTR will submit an application to the U.S. Environmental Protection Agency (U.S. EPA) for grant funding for the corrective action cleanup side of the program. He said the U.S. EPA has indicated a new style work plan will need to be submitted, but no problems are anticipated with moving forward with the grant application.

Mr. Krichbaum stated that a Certified UST Installer course was recently conducted with over 20 students in attendance. He said the next phase of the training is the Certified UST Inspector course, which will be held in the upcoming week. He commented that they are pleased with the turnout of people wishing to become UST inspectors.

Mr. Krichbaum reported that there are just over 21,000 BUSTR-regulated tanks, 3,400 tank owners, and 7,000 active facilities. Chairman Rocco asked if funding is still available through the abandoned tank program and Mr. Krichbaum confirmed that grant money is available for tank removal and cleanup activities at certain sites. He explained that BUSTR's role in the program is to make determinations of whether or not there is a viable responsible party. He noted that he did not know the

level of funding available or how much had been awarded in recent months.

Financial Reports:

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

Audit Update

Mr. Leasor stated that the Auditor of State completed its review of the audit reports and financial statements for fiscal year 2021. He said the audit was released to the public on January 18, 2022, and it is available on the Board's webpage under the Financial Info tab.

December and January Financials

Mr. Leasor said the December and January financials were emailed to each member.

Mr. Leasor reported, as of March 15, 2022, the unobligated account balance is \$17.2 million. He said this amount includes \$2.2 million in STAR Ohio (State Treasury Asset Reserve of Ohio) and the custodial account, and \$15 million invested in U.S. treasuries and U.S. agency callable bonds. He said a \$1 million U.S. treasury matured at the end of February and the funds were transferred to the STAR Ohio unobligated account. He explained that, as was discussed at the Finance Committee's November meeting, the monies will be used to fund the obligated account in July 2022 for the payment of claims for fiscal year 2023. He said the account balance for the payment of claims is currently \$3 million.

Mr. Leasor reported that 99.5% of the budgeted tank fee revenue had been collected through January 31, 2022, net of refunds paid. He pointed out that in January an unrealized loss of \$147,000 in interest income was recorded. He explained that for accounting purposes, the value of the board's investments are recorded on a monthly basis with the amount recorded being made up of interest earned on the investments and the change in the market value of the investments. He commented that as the market value of investments in treasuries and bonds decrease, the decrease is reported as an unrealized loss. He noted that the decrease in market value is driven by an increase in interest rates, which has an inverse effect on the market price of the bonds. He stated that a significant decrease in the market value of U.S. treasuries and agency bonds was recorded in January, but the Board's policy is to hold these investments to maturity, and therefore, the full principal is received upon maturity and no loss on the investments is realized. He said information on refunds and fee collections would be presented as part of the compliance and fee assessment report.

Mr. Leasor reported that the claims expense for the month of January was \$596,000 and as of March 16, 2022, a total of \$9 million had been paid for claims for fiscal year 2022. He noted this amount represents 75% of the \$12 million obligated for the fiscal year and includes the third of four payments to BP as result of a settlement agreement and release approved by the Board.

Mr. Leasor stated that, as of January 31, 2022, expenses should be 58.3% of the amount budgeted for the fiscal year. He reported that operating expenses for the month of January were approximately \$163,000. He said postage expenses were 93% of the amount budgeted. He said this was due to postage fees for the final quarter of fiscal year 2021 being paid in September of fiscal year 2022. He said these charges include fees for the annual fee statement mailing, which is sent by certified mail.

owners for program year 2021. She said there are 170 Applications for Certificates of Coverage currently being processed. She said for program year 2021, there are 28 owners with unresolved Pending Denials and 52 owners with unresolved Determinations to Deny a Certificate of Coverage.

Ms. Esquivel stated that there are 31 uncashed refund checks totaling \$27,638. She said there are 18 owners with pending refunds totaling \$89,811 to whom more information request letters had been sent notifying them that additional information is needed before the refund may be issued. She said there are 37 owners with pending refunds totaling \$69,165 for which information had been requested, but no responses have been received.

Mr. Burks asked the age of the oldest uncashed check and Mr. Leasor said the Board recently began writing its own checks with the oldest uncashed check being issued in January 2022, which he noted would stale date in March. He said checks were previously written by the Treasurer of State, which had a 90-day stale date. Mr. Burks said following the Board's discussion at the previous meeting concerning check writing, he researched ACH transfers and found that ACH transfers have a lower cost and are safer and more efficient than checks. He encouraged the Board's employees to take another look at using ACH transfers going into the future.

Chairman Rocco said the challenge with ACH transfers is that account information is needed to process the transaction and in scenarios where the owner is unresponsive and the funds are unclaimed, it might not be obvious where the refund money should be sent. He said when looking at the bigger picture, ACH transfers might be something to consider for claim reimbursements because the account information could be collected as part of the claim submission. He commented that the check-writing process discussed at the previous meeting was put in place because something needed to be done fairly quickly. After further discussion, the Chairman recommended the Finance Committee review the information gathered by Mr. Burks and invited him to attend the committee's June meeting.

Ms. Esquivel stated for clarification that the uncashed checks in her report are fee refund checks that were issued but never cashed. She noted that when a refund check is uncashed, the money is placed into an unclaimed funds trust account and if the money remains unclaimed, after five years the money is transferred to the unobligated account.

Claims Reports:

Chairman Rocco called on Hannah Brame, Claims Supervisor, to present the claims reports.

Ms. Brame reported, as of March 1, 2022, the total maximum liability of in-house open claims is approximately \$9.42 million. She said using the claim payout ratio of 78%, which is the average ratio over the past five years, the anticipated payout of unpaid in-house claims is about \$7.35 million.

Ms. Brame reported, as of March 1, 2022, a total of 500 claims with face values above the deductible amount were pending review and noted the claims staff are currently reviewing claims received prior to December 2021, as well as claims from Truenorth and Valero/Premcor for which review had previously been suspended due to anticipated litigation. She said there are 51 Truenorth claims that were placed into the queue for review. She reported that 24 claims for six releases which had received no further action (NFA) status from BUSTR had been reviewed with determinations for 15 of those

claims being issued in February 2022 and the remaining nine claims that had an NFA are anticipated to have a determination issued in March 2022. She said there are 27 claims for seven releases that have not received an NFA status that were placed into the queue for review and those include 18 claims for three releases with total face values above the deductible, for which determinations are expected to be issued by the end of the current fiscal year. She reported that nine claims are for four releases with face values below the deductible amount for which a detailed claim review will be conducted once the total face value exceeds the deductible. She reported that 92 Valero/Premcor claims were placed into the queue for review and will be reviewed over the next few months.

Ms. Brame reported, as of March 1, 2022, a total of 21 claim determinations were under appeal, including two new appeals that were received since January 12, 2022. She explained that these appeals pertain to only four release sites, as there are multiple appeals for three of those sites. She noted that the staff is waiting for information to support the appeals for 18 of the appealed determinations and additional information provided is under review for three appeals.

Ms. Brame stated that, as of March 1, 2022, a total of 325 claim packages were received and a total of 401 claim determinations were issued this program year. She noted that no payment could be issued for 12 claims as the total face values were below the deductible amounts and the releases had received NFA status. She said the average payout per claim application this program year is \$12,302 and the average claim payout is 83.8% of the net claim value (face value – deductible). She noted that on average 13.1% of the claim face value is disallowed as non reimbursable.

Ms. Brame reported, so far for program year 2021, a total of 46 eligibility applications were received and 59 eligibility determinations were issued. She said of these eligibility determinations, 46 were approved and 13 were denied. She said the reasons for denial included three for no release demonstrated, four for late filing of the eligibility application, one for lack of a valid Certificate of Coverage, two for abandoned or out-of-compliance tanks, and three for no corrective action required by BUSTR. She noted that since March 1, 2022, nine additional eligibility determinations were issued. She said as of March 1, 2022, a total of 104 eligibility applications were open. She noted that 17 applications were unreviewable until the necessary reports are received and more information has been requested for three applications. She noted that, as of March 1, 2022, seven eligibility determinations were under appeal. She said additional information is expected for two appeals, information for five appeals has been received and is under review, and a hearing is scheduled for the remaining eligibility appeal.

Ms. Brame reported, as of March 1, 2022, a total of 78 cost pre-approval requests were received. She said the cost pre-approval requests include 21 requests for new remedial action plans; 26 requests for annual costs for remedial action plans or free product recovery; four requests for an interim response action requiring BUSTR approval; 11 requests for either Tier 3 or monitoring/calibration plans; 11 cost exceedance notifications; and five voluntary requests for cost pre-approval. She said as of March 1, 2022, a total of 64 cost pre-approval notifications had been issued and 46 cost pre-approval requests were pending review. She noted that since March 1, 2022, nine more cost pre-approval notifications had been issued.

Rules Committee Report:

Chairman Rocco said prior to the Board meeting, the Rules Committee met to discuss several issues raised concerning the Board's rule 3737-1-04. He said, as a result of their discussions the committee is recommending a number of changes to the rule. He said the majority of the changes are minor editorial changes to add clarification and make the rule easier to read.

Chairman Rocco said a more significant change is in paragraph (F)(1) of the rule dealing with the installation of tanks and when a Certificate of Coverage can be issued for a site. He said in many cases, a UST being installed is filled with product long before it is placed in service, and the concept of the change is to have the tank owner submit their request for the Certificate of Coverage at the time of installation so their Certificate is effective at the time product is placed in the tank. He said this way, a tank would be covered if a release were to occur between the time a tank was physically put in the ground and the time it was put into service.

Chairman Rocco said the change to paragraph (F)(2) concerns the transfer of the Certificate of Coverage and the change is being made to ensure a new owner of a tank has sufficient time to provide transfer notification and pay the fees. He said the rule is being modified to provide a new owner transferring a Certificate the ability to pay within 30 days of the assessment of fees for the tank rather than 30 days of the transfer as is currently written in the rule.

Chairman Rocco asked if there were any questions concerning the proposed changes and there were none. He then requested a motion to approve the draft amendments to rule 3737-1-04 proposed by the Rules Committee and to file the amended rule with the Joint Committee on Agency Rule Review (JCARR), the Legislative Service Commission, and the Secretary of State. Vice-Chairman Hull so moved and Mr. Bryant seconded. The Chairman asked if there were comments and Mr. Ridi said the changes will definitely be helpful to smooth the process out. A vote was taken and all members were in favor. The motion passed.

Chairman Rocco asked the staff to explain how the rule will move forward in the rule process and Jonathan Maneval explained that the next step is for a Business Impact Analysis to be submitted to the Common Sense Initiative (CSI) Office and Board stakeholders. He said there will be a two-week comment period for stakeholders to provide comment on the proposed amendments and thereafter the CSI Office will issue its recommendation of whether to proceed with filing the rule or to address any concerns raised by stakeholders. He explained that if approval is given to move forward, the rule will be filed with JCARR, the Legislative Service Commission, and the Secretary of State, the public hearing will be held at the Board's June meeting, and a JCARR hearing will be held in June or July. He said the Board would likely adopt the rule at its September meeting and set an effective date for October. The Chairman said the important point is that the rule change will not be effective until October assuming it moves through the process smoothly.

New Business:

Chairman Rocco asked if there was any other business to discuss and Mr. Burks asked what the process is to advertise and fill the vacant environmental positions. The Chairman called on Mr. Krichbaum to briefly explain BUSTR's hiring process. Mr. Krichbaum said BUSTR works with human resources to

post open positions and noted there may be considerations internally that must be addressed first for bargaining unit positions. He said after the position goes through the posting process they move forward with interviewing candidates. He noted that six positions are currently open and they are going through that process. Mr. Burks commented that it is hard to find talent in the current market and his concern is how far of a reach the postings go. Mr. Krichbaum said almost all state agencies use the same hiring process, with the job postings being visible to the public on the state's website. Chairman Rocco said any questions or suggestions concerning the process might be better discussed outside of the meeting.

Certificates of Coverage – Ratifications:

Chairman Rocco called on Madelin Esquivel, Assistant Director, 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 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; 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. She said if a Certificate has not been issued in one of the prior two years and the tanks existed during those years, the owner must comply with rule 3737-1-04.1 by demonstrating the tanks are in compliance with the Fire Marshal's rules for the operation and maintenance of USTs.

Ms. Esquivel stated that, if the requirements are met, a Certificate is issued. She said if the requirements are not met, the Certificate is denied. She explained that if the Certificate is denied, the owner is provided with an opportunity to appeal the denial. She said that, throughout the denial process, the Board's staff works closely with the owner to resolve any deficiencies. She stated that all processes within the Board's rules and Revised Code were followed to make a determination to issue or deny the Certificates of Coverage.

Ms. Esquivel requested the Board ratify the Director's actions with respect to the issuance of the program year 2020 Certificates of Coverage for the one owner of the seven facilities included on the program year 2020 Certificates issued list.

Vice-Chairman Hull moved to ratify the issuance of the 2020 Certificates of Coverage for the facilities listed. Mr. Fleming seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Esquivel stated that no determinations to deny a 2020 Certificate of Coverage had been issued since the January meeting.

Ms. Esquivel requested the Board ratify the Director's actions with respect to the issuance of the program year 2021 Certificates of Coverage for the 114 owners of the 388 facilities included on the program year 2021 Certificates issued list.

Vice-Chairman Hull moved to ratify the issuance of the 2021 Certificates of Coverage for the tanks

listed. Mr. Burks seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Esquivel requested the Board ratify the Director's actions with respect to the denial of the program year 2021 Certificates of Coverage for the 98 tanks located at the 38 facilities included on the program year 2021 Certificates denied list.

Vice-Chairman Hull moved to ratify the denial of the 2021 Certificates of Coverage that were listed. Mr. Bryant seconded. A vote was taken and all members were in favor. The motion passed.

Executive Session:

Chairman Rocco stated that an executive session was needed and 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. Vice-Chairman Hull so moved and Mr. Ridi seconded. The Chairman called for a roll call. The following members voted in the affirmative: Ms. Waggener and Messrs. Bergman, Bryant, Burks, Fleming, Hull, Ridi, Stephenson, Lenzo, Krichbaum, and Rocco. There were no nays. The motion passed.

The Chairman then briefly explained the process for the Board to privately participate in the executive session using ZOOM. The Chairman stated that the public meeting would reconvene following the executive session.

Reconvene Meeting

The Board adjourned from the executive session and reconvened the public meeting. Messrs. Fleming and Lenzo were no longer present at the meeting.

Confirm Next Meeting and Adjourn:

Chairman Rocco said the next Board meeting will be held on Wednesday, June 8, 2022, at 10:00 a.m. He said the Finance Committee would meet at 9:00 a.m. prior to the Board meeting.

Chairman Rocco reminded members that Financial Disclosure Statements are due to be filed by May 15, 2022. Vice-Chairman Hull asked when members needed to complete their ethics training and Mr. Maneval explained that members had until the end of December 2022 to complete the annual ethics training.

Mr. Burks made a motion to adjourn the meeting and Mr. Ridi seconded. All members were in favor.

Note: Numbers in brackets [] were incorrectly stated at the meeting. The numbers as written reflect the correct numbers from the report materials provided at the meeting.