



Petroleum Underground Storage Tank Release Compensation Board

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MINUTES OF THE 139th MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD

November 9, 2011

BOARD MEMBERS IN ATTENDANCE

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

EX-OFFICIO MEMBERS IN ATTENDANCE

William Vedra, representing Director David Goodman, Ohio Department of Commerce
Chris Geyer, representing Director Scott J. Nally, Ohio Environmental Protection Agency
Bill Bishilany, representing Josh Mandel, Treasurer, State of Ohio

OTHERS IN ATTENDANCE

Starr Richmond	Executive Director, PUSTRCB
Don Leasor	Chief Fiscal Officer, PUSTRCB
Madelin Esquivel	Assistant Director, PUSTRCB
Cindy Duann	Environmental Claims Supervisor, PUSTRCB
Rick Trippel	Environmental Claims Analyst, PUSTRCB
Ellen Mitton	Administrative Coordinator, PUSTRCB
Jonathan Maneval	Accounts Receivable Analyst, PUSTRCB
Carla Winfrey	Office Assistant, PUSTRCB
Cheryl Hawkinson	Assistant Attorney General
Howard Silver	Board Hearing Officer
Daniel Griest	Speedway SuperAmerica
Andy Shrock	Parsons
Doug Darrah	ATC Associates
Ed Greenlee	ATC Associates
Michael Baker	BJAAM Environmental
Verne Ord	ODOC, Bureau of UST Regulations
Jay Meglich	Schneider Downs
Erin Abbot	Schneider Downs
David Waxman	Waxman Blumenthal
Andrea Salimbene	McMahon DeGulis LLP
Christie Kuhlmann	Stantec
Yvonne Monti	Sunoco

Minutes submitted by:

Ellen S. Mitton
Administrative Coordinator

Call To Order:

Chairman Rocco convened the one hundred thirty-ninth meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, November 9, 2011. The following members were in attendance: Jim Rocco; John Hull; Duane Cable; Cheryl Hilvert; Steve Hightower; Mayor Don Kuchta; Brian Epperson; Tom Stephenson; Bill Vedra representing Director David Goodman, Ohio Department of Commerce; Bill Bishilany, representing Ohio Treasurer Josh Mandel; and, Christopher Geyer, representing Director Scott J. Nally, Ohio Environmental Protection Agency.

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

BUSTR Report:

Chairman Rocco called upon Bill Vedra, Bureau Chief, to present the BUSTR report.

Mr. Vedra said BUSTR continues activities under the American Recovery and Reinvestment Act of 2009 (ARRA). He said a no-cost grant extension until December 31, 2011 had been granted and that activity is proposed to continue at seven sites to utilize the remaining grant money. Mr. Vedra said to date 23 sites had received no further action (NFA) letters and stated he is optimistic NFAs will be issued for these seven sites very soon, resulting in a total of 30 sites out of the 34 sites identified being cleaned up under ARRA.

Mr. Vedra said BUSTR also continues working on the OTTER database upgrade project, which is in its ninth week. He said the User Interface (UI) is complete and the database programming had started. Mr. Vedra said the project currently is on target to meet the June 30, 2012 completion date.

Mr. Vedra noted the UST operation compliance site inspections are ongoing and at this time BUSTR is 29% ahead of projections. He said the current grant cycle ends August 8, 2013.

Mr. Vedra said for the week ending October 28, 2011, there had been 183 corrective-action and closure reports reviewed, which resulted in 15 NFAs being issued. He said BUSTR now is 18% ahead of their total NFA projections.

Mr. Vedra identified a new portion of the report addressing the caseload of the Enforcement Section at BUSTR. He said currently there are 400 cases in process, which include 150 closure issues, 200 old rule 6, 7 and 8 issues, 25 administrative violations; and, 25 failures to equip/operate, also known as the "red tag rule."

Mr. Vedra noted that BUSTR is spending a good amount of time working on its administrative rules as required by the five-year rule review process. Mr. Vedra said there are 18 administrative BUSTR rules that are subject to the state's five-year rule review requirements and of those 18, there are 14 rules drafted and four have been adopted. Mr. Vedra stated BUSTR plans on all revisions being submitted to the Joint Committee on Agency Rule Review (JCARR) by mid-December 2011.

Mr. Vedra said interviews had been held on November 2-3, 2011 for the vacant northwest inspector position. He stated a candidate was selected but the offer had yet to be extended to the applicant. Mr. Vedra stated as soon as that one position is filled, BUSTR would be fully staffed.

Mr. Vedra stated currently there are 3,889 owners of registered facilities and a total of 22,212 registered USTs. He said there had been 26,507 no further actions (NFAs) related to clean-ups issued within the BUSTR program.

Chairman Rocco said he wanted to clarify the BUSTR statute changes that may be of interest to the members. He said the first modification is to the statutory definition of major repairs to be consistent with some of the changes that are proposed for rule 10, which is the BUSTR permit rule. He said the other proposed change to the statute is to allow certain BUSTR sites to be cleaned up using the current OEPA Voluntary Action Program (VAP). He said the Class C site is a site for which BUSTR has determined there is no viable responsible party. He said those Class C sites may be cleaned up by a volunteer using the VAP criteria and an NFA issued through the Ohio EPA would be confirmed by BUSTR. He said a volunteer is determined by the Fire Marshal pursuant to Chapter 3737 of the Revised Code to conduct a voluntary action in accordance with Chapter 3746 of the Revised Code and is not a responsible person.

Financial Report:

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

Audit Report

Mr. Leasor stated a draft copy of the Financial Statements and Supplementary Financial Information for the years ended June 30, 2011 and 2010 had been distributed to each member. He introduced Mr. Jay Meglich and Ms. Erin Abbot, representatives from the accounting firm of Schneider Downs. Mr. Meglich reiterated this is a draft of the financial statements, however he did not anticipate any changes. Mr. Meglich stated this is the eighth audit of the Board's financial statements completed by Schneider Downs, and noted the contract would be over in two more years.

Mr. Meglich stated for the first time in eight years the financials are being presented in November, thus the Board would be submitting the financials to the Auditor of State prior to the December 31, 2011, deadline. He noted this is the first audit since 2005 in which there is not a significant deficiency in internal control or a material weakness associated with the financial statement. Mr. Meglich said he expected Schneider Downs would issue an unqualified opinion on the financial statements.

Mr. Meglich asked Ms. Abbot to present the draft of the financials to the Board. Ms. Abbot briefly explained the audit process. She noted the firm had consulted with an actuary to assist in establishing a reasonable assessment of management's calculations of the reserve for unpaid claims. She said there were no adjustments as a result of the audit procedure. She continued, briefly explaining the audit results.

Ms. Abbot stated that the last page of the report references a letter to the Board, which recommends that management present the amounts associated with recovery of bad debt and bad debt expense be broken out in the presentation of revenue on the Profit & Loss statement and not be lumped in with tank fee revenue. She said management did have those numbers available this year for their perusal and they would like to see comparable numbers available in future years.

Mr. Leasor requested that each member, and specifically the members of the Finance Committee, take time to review the draft financial statements, and if there are questions or comments, to contact Ms. Richmond or Mr. Leasor before November 23, 2011.

September Financials

Mr. Leasor stated the September financials were emailed to each member. He asked if there were any questions or concerns regarding these reports. Hearing none, Mr. Leasor began with the September financials.

Mr. Leasor said the current unobligated balance is approximately \$7.1 million. He said there is currently \$6.9 million in the obligated account that is set aside for fiscal year 2012 claim settlement payments.

Mr. Leasor said the claims expense for September was \$808,185; and, as of November 8 the claims expense this fiscal year is approximately \$2.1 million.

Mr. Leasor said as of September 30, the Legal & Professional line item is approximately 25.8% of the amount budgeted, which includes \$13,300 in collection costs charged by the Attorney General's office and an additional \$30,100 in costs charged by Special Counsel. He said the \$13,300 in collection costs for the Attorney General's services is offset by \$7,000 paid by owners for those collection costs.

Mr. Leasor said the postage line item is approximately 58% of the amount budgeted and includes postage costs for the annual fee statement mailing and the spring 2011 newsletter, which was paid in July.

He said as of September 30, the unemployment compensation line item was 34.6% of the amount budgeted due to charges assessed by the Ohio Department of Job & Family Services for May and June of fiscal year 2011 being paid in July 2011.

Mr. Leasor noted all other expenses are on target for this time in the fiscal year.

In response to Mr. Hightower's question regarding the variations in salary expenses, Mr. Leasor explained the August salary line item is higher because there had been a personal leave payout that month.

Fee Statement Statistics

Mr. Leasor said for the 2011 program year there had been a little over \$13.5 million collected in current year fees to date, and just over \$305,000 collected in prior year fees, which represents 97% of the \$14.25 million budgeted for fee revenue for fiscal year 2012. Mr. Leasor said the \$305,000 collected in prior year fees is net of approximately \$114,000 in refunds paid during fiscal year 2012. The \$114,000 of refunds paid represents 46% of the \$250,000 goal to be paid in refunds this year. He said 3,272 owners had paid fees for 20,576 tanks. Mr. Leasor explained that 72% of the fees were paid at the standard deductible and 28% were paid at the reduced deductible, which falls in line with prior years.

Chairman Rocco said that in next year's collection cycle, he would be interested in a comparison of the fees invoiced versus the fees collected.

Claims Report:

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

Ms. Duann said the 236 sites with claims submitted to the Board and cleaned up exclusively under BUSTR's 1999 and/or 2005 Corrective Action Rule have an average clean-up cost of \$67,781 per site.

She said after applying the deductible and disallowing non-reimbursable costs, the average claim payout per site is \$20,961.

Ms. Duann said for the first four months of this program year, the Board received 261 claim packages, averaging 65 claim packages a month. She said the staff settled or closed 241 claims, averaging 60 claim packages settled or closed per month. Ms. Duann said the average payout per claim is \$12,086. She said the staff is working diligently to increase the number of claims to be settled or closed in November.

Ms. Duann said in addition to the normal review of claim packages, over the past 18 months the claims staff has been reviewing over 250 time-consuming claims, which are a result of 32 sites that were sold by a major oil company to five different owners. She said she is happy to report that this task is almost accomplished and soon these new owner claims will be in the first-come, first-serve claims review pipeline.

Ms. Duann said the Board received 12 eligibility applications for the month of October, which is the greatest number received in any month in recent years. She said currently there are 17 open eligibility applications pending review, and typically these applications are reviewed within 30 days of receipt.

She said during the first four months of this program year, the Board received 63 cost pre-approval requests or an average of 16 requests per month. She said the staff had completed an average of 20 costs pre-approval reviews per month, indicating the staff's goals associated with cost pre-approval requests are being met.

Old Business:

Finance Committee Report

Chairman Rocco said the Finance Committee met prior to today's Board meeting to discuss the Fund fees, which are reviewed on an annual basis to decide whether changes are needed in the fee structure; and, establishing a policy for collections.

Chairman Rocco said as expected, earlier this year the Board's unobligated cash balance was low as a result of paying off the bond debt early. He said the Board is now seeing an increase in the cash reserve, reiterating the unobligated balance is now approximately \$7.1 million. He said the Board's objective is to get the cash reserve to an amount either equal to the annual costs or close to \$15 million. He said the committee looked at a series of projections based on conservative assumptions regarding the number of tanks and increases in administrative costs. Chairman Rocco said by the end of this fiscal year, the Board should have an unobligated balance very near \$13 million and, as we enter into the next fiscal year, that amount should increase to the \$15 million cash reserve target. Chairman Rocco said the committee does not recommend an increase in fees or any changes in the deductibles. He said looking at projections for paying the claim liability, as well as the income, over the next four to five years the Board should be able to make a very substantial dent in the Board's outstanding claim liability.

Chairman Rocco said the Board's optimistic financial future would allow opportunities for the Board to potentially reduce expenses incurred by tank owners. He said the Finance Committee would meet after the Board meeting in January to begin discussing those possibilities; such as, reducing fees, reducing deductibles, accelerating claim reimbursement payments, or finding alternatives for processing claims. Chairman Rocco said the Board would also be meeting with representatives of the Treasurers' office to discuss alternative low risk, high yield investments for a better return on the unobligated funds.

Chairman Rocco requested a motion to accept the Finance Committee's recommendation that the Board not increase tank fees or change deductible amounts for program year 2012. Mayor Kuchta so moved. Mr. Hull seconded. A vote was taken and all members voted in the affirmative.

Attorney General Certification Policy

Chairman Rocco called upon Ms. Madelin Esquivel to discuss the proposed Collections Policy.

Ms. Esquivel said the Finance Committee had reviewed and edited the draft policy during the committee meeting and she would describe the final version and the process now in place to improve the collection process for aging and delinquent accounts.

Ms. Esquivel said the in-house collection process begins when a responsible person fails to remit the assessed fees by the later of July 1st or 30 days from the mailing of an invoice. She said if the fees are not paid in that timeframe, a Notification of Non-Compliance is issued. She said following that 30-day period if the fees are not paid, the responsible person is then issued an Order Pursuant to Law, which requires payment of the assessed fees and an additional late payment fee of up to \$1,000 per tank.

Ms. Esquivel said the outsourced collection process includes certifying delinquent accounts to the Attorney General's Office of Collections Enforcement (AGO) a minimum of two times per year.

She said the current program year's fees are certified to the AGO for collection in January of the program year in which the fees became delinquent. Ms. Esquivel said as staff resources permit, prior program years' fees and accounts aged beyond 12 months are reviewed and certified to the AGO for collection in September of each year.

Ms. Esquivel stated that the AGO charges a 10% collection fee on all amounts collected. She said if payment is not received, the account is then assigned to an independent attorney, known as Special Counsel, in the responsible person's geographical area. In addition to the 10% AGO collection fee, a 33 1/3% collection fee is charged for amounts up to \$25,000 collected by Special Counsel and a sliding scale is applied to amounts greater than \$25,000. She said if Special Counsel is unsuccessful in its collection efforts, accounts may be forwarded to a third-party vender specializing in the recovery of underperforming assets.

Ms. Esquivel said interest is assessed at the annual rate established by the Tax Commissioner on all delinquent amounts certified to the AGO for collection. She said pursuant to the policy adopted by the Board members at the June 8, 2011 meeting, all costs of collection, including but not limited to the AGO, special counsel, and third-party vendor fees, shall be assessed to the responsible person as an additional obligation. Ms. Esquivel said the Board also elected to authorize the AGO to waive interest when it results in the collection of the per-tank, late payment, and/or late payment fees.

Ms. Esquivel said the Board also adopted in its policy that the Director of the Fund shall approve all delinquent accounts to be assigned to Special Counsel or third-party vendors for collection prior to forwarding these accounts to Special Counsel or third-party vendors.

Ms. Esquivel said the Collections Policy includes an ability to pay program for responsible persons who no longer own or operate underground storage tanks (USTs). If the Board adopts the policy, responsible persons will be able to apply for and receive a determination of their ability to pay delinquent fees based upon a demonstration of financial hardship. She said the "Application for Individual/Corporate Ability to Pay Fees" will be reviewed and determined by the Director of the Fund and may result in the write off or a reduction of fees.

Ms. Esquivel said fees erroneously paid for exempt, non-existent, or otherwise ineligible tank systems shall be applied to the responsible person's account to offset any delinquent fees before the account is certified to the AGO for collection. She said if the erroneously paid fees exceed the amount of delinquent fees, a refund of the difference and notification of the offset shall be issued to the responsible person. She said if the responsible person objects to the offset, they may provide additional information and request a second review and reconciliation of the account.

Ms. Esquivel said pursuant to O.R.C. 3737.91(G), the Director of the Fund may request the Attorney General to bring a civil action, including a temporary restraining order or preliminary or permanent injunction, against the responsible person in the common pleas court of the county in which the USTs are located.

Ms. Esquivel said pursuant to the policy adopted by the Board at its September 12, 2007 meeting, the AGO has authorization to write off delinquent fees 15 years from the date of certification.

Ms. Esquivel concluded stating nothing in this policy is intended to limit the Director's ability to settle delinquent accounts through the appeals process, the AGO offer-in-compromise program, enforcement process or other settlement negotiations that may arise in the normal course of business.

Chairman Rocco requested a motion to adopt the Collections Policy as written with the understanding that the Finance Committee would annually review the policy and recommend to the Board any improvement or enhancements. Mr. Hull so moved. Mayor Kuchta seconded and a vote was taken. All members voted in the affirmative.

Ms. Esquivel stated the Board had received a Service Level Agreement from the Attorney General's Collections Enforcement section describing the AG's services and the Board's preferences regarding the collection of delinquent accounts. She asked the Board to authorize the Chairman to sign that agreement.

Chairman Rocco requested a motion to authorize the Chairman to sign the Service Level Agreement on behalf of the Board. Mr. Hull so moved. Mr. Cable seconded. A vote was taken and all members voted in the affirmative.

New Business

Appeal Hearings

Chairman Rocco called upon Ms. Cheryl Hawkinson to discuss the eligibility appeal hearing regarding Mr. Robert D. Mooney, owner of Mooney's Sunoco located in Orange Village, Ohio.

Ms. Hawkinson stated that Mr. David Waxman, the attorney recently retained by Mr. Mooney, is present today. She said that they would like to jointly request the Board to remand the Report and Recommendation to the Executive Director to enable her to peruse new information made available by Mr. Waxman after the Report and Recommendation had been submitted. She said following the review of the new information, if the issue still is not resolved, they would like to request the Hearing Officer to hold an amended hearing to review only the submitted additional information.

Chairman Rocco requested a motion to remand the Mooney appeal to the Executive Director for review of new information, and, if necessary, to have an amended appeal hearing to hear only the new information. Mr. Hull so moved and Ms. Hilvert seconded. A vote was taken and all members voted in the affirmative.

Chairman Rocco called upon Mr. Howard Silver, the Board's Hearing Officer, to present the two remaining Report and Recommendations to the Board.

Claim #5386-0001/10/29/96-B, J.F. Enterprises, 6005 Secor Road, Toledo, OH 43613

Mr. Silver said the parties involved waived a record hearing and submitted this matter to the hearing officer upon stipulations of fact, joint exhibits, and the parties' written arguments.

Mr. Silver said on October 29, 1996, J. F. Enterprises suspected or confirmed an accidental release from the underground storage tanks (USTs) located at 6005 Secor Road in Toledo, Ohio. He said subsequent to October 29, 1996, J. F. Enterprises was determined to be eligible for payment or reimbursement for corrective action costs from the Petroleum UST Financial Assurance Fund (Fund).

Mr. Silver said that in May 1997, five USTs were removed from the referenced site. He said that on October 29, 1997, the Ohio State Fire Marshal issued a No Further Action (NFA) letter to J. F. Enterprises for the site.

Mr. Silver said effective April 1, 2007, the Petroleum UST Release Compensation Board (Board) adopted the following language to be added to Ohio Administrative Code section 3737-1-09(A)(12): "Under no circumstances shall additional corrective action costs be reimbursed when the original no further action letter for the subject release is rescinded more than five years from the date it was issued."

Mr. Silver said that on March 27, 2008, more than five years after the original October 29, 1997, NFA letter had been issued, BUSTR rescinded the NFA letter dated October 29, 1997. He said that the March 27, 2008 letter from BUSTR, which rescinded the original NFA letter, also directed J. F. Enterprises to perform a tier one source investigation as required by Ohio Administrative Code section 1301:7-9-13(H) that became effective in March 2005.

Mr. Silver said J. F. Enterprises remediated the release site and on February 6, 2009, it submitted a claim for payment or reimbursement for corrective action costs from the Fund. He said that on August 14, 2009, the Director of the Fund issued a claim settlement that denied reimbursement or payment from the Fund.

Mr. Silver stated the authority of the Board to adopt rules that are necessary or appropriate to implement and administer O.R.C. sections 3737.90 to 3737.98 is expressed in O.R.C. section 3737.90(B)(2). He said there is no express language within the Ohio Administrative Code that indicates the language in O.A.C. section 3737-1-09(A)(12) is to be applied retroactively; and, there is no implied subtext in the O.A.C. that indicates the language is to be applied retroactively.

Mr. Silver said the last sentence of O.A.C. section 3737-1-09(A)(12) effected substantive rights of holders of NFA letters that were rescinded more than five years after the original NFA letter had been issued. He said that on October 29, 1997, when BUSTR issued the NFA letter to J. F. Enterprises for the release site at issue, no five-year limitation existed effecting the payment or reimbursement of corrective action costs from the Fund after the rescission of an original NFA letter.

Mr. Silver stated applying O.A.C. section 3737-1-09(A)(12) so as to reach back to October 29, 2002, five years after the issuance of the October 29, 1997 NFA letter, and terminate payment or reimbursement rights otherwise possessed by J. F. Enterprises, required a retroactive application of the language that took effect on April 1, 2007. He said there is no intention expressed or implied in the language of O.A.C. 3737-1-09(A)(12) indicating that this language is to be applied retroactively. Mr.

Silver said the language of O.A.C. section 3737-1-09(A)(12) is applied appropriately when this language is applied prospectively from April 1, 2007; however, the Director of the Fund, in the claim determination letter dated August 14, 2009, utilized an application of the rule that is not prospective but retroactive.

Mr. Silver stated based on the findings of fact and conclusion of law presented in his report, he recommended to the Board that the claim determination issued on August 14, 2009, by the Director of the Fund be vacated and remanded to the Executive Director for further review. Mayor Kuchta moved to accept the hearing officer's recommendation. Mr. Hightower seconded and a vote followed. All members voted in the affirmative.

Owner #4979 – Eligibility ID 0001, Estate of Herbert H. Niehaus, dba Mt. Airy Sunoco

Mr. Silver said Herbert H. Niehaus operated a gasoline service station known as Mt. Airy Sunoco at 5835 Colerain Avenue, Cincinnati, Ohio beginning in 1949 until late 1992.

Mr. Silver said that in late 1992, at the age of sixty-eight, Mr. Niehaus became ill and subsequently suffered a series of mini strokes that incapacitated him, keeping him from working at the service station and from operating a motor vehicle.

Mr. Silver stated soon after, Mr. Niehaus suffered a second stroke that required care of Mr. Niehaus in a long-term care facility, where he passed away in 2005. He said with the passing of Mr. Niehaus in 2005, Mt. Airy Sunoco, the release site, became part of the estate of Mr. Niehaus, managed by executrix Gloria Goetz, Mr. Niehaus' daughter.

Mr. Silver said two 4,000-gallon underground storage tanks (USTs), identified as tanks 1 and 2, were installed in June 1949 and a third 4,000-gallon tank was installed at the site in 1985. He said tanks 1 and 2 were last used on January 5, 1990 and tank 3 was last used on November 12, 1992.

Mr. Silver said that on August 19, 1993, BUSTR issued a permit to Mt. Airy Sunoco for the removal of three USTs and these tanks were listed as tanks 1, 2, and 3 on the tank inventory form within the application for Fund eligibility. He said these three tanks were removed between October 1-5, 1993.

Mr. Silver said that on October 1, 1993, a suspected release at the site was reported to BUSTR based upon observed stained soil and odors in backfill materials amassed during tank removal activities, but no free product was observed.

Mr. Silver stated that on October 5, 1994, BUSTR received a UST Closure Assessment Report for the release site, which reported that the soil samples collected from the site indicated chemicals of concern above action levels.

Mr. Silver said that on December 5, 1994, BUSTR sent correspondence to Mr. Niehaus indicating the receipt of the closure assessment report and confirming that a release had occurred from the USTs located at the site. He said BUSTR also advised Mr. Niehaus that he was required to perform a site assessment to define the extent of vertical and horizontal contamination in soil and groundwater on-site and off-site. Mr. Silver stated the site assessment was to be submitted to the State Fire Marshal within 180 days of reporting the release or suspected release.

Mr. Silver said that on June 12, 1996, BUSTR sent a second letter to Mr. Niehaus noting a confirmed release at the site had been reported to BUSTR on October 5, 1994, but BUSTR had not received the required site assessment report that had been due on April 2, 1995. He said the June 12, 1996 letter also directed Mr. Niehaus to submit the site assessment within 30 days.

Mr. Silver said that on September 17, 2002, BUSTR directed to Mr. Niehaus a third letter that referred to the previous letters of December 5, 1994 and June 12, 1996 that had asked for a site assessment report. He said it is noted in the September 17, 2002 correspondence that no such report had been received. Mr. Silver said the September 17, 2002 letter also notified Mr. Niehaus that such a report must be received within 30 days of the date of this letter if the release site is to be found in compliance with O.A.C. section 1301:7-9-13, the State Fire Marshal's corrective action rule that was in effect in September 1992.

Mr. Silver said that on October 16, 2002, BUSTR received correspondence from Ms. Gloria Goetz, daughter of Mr. Niehaus, requesting information on what was needed to satisfy BUSTR's requirements.

Mr. Silver said that on January 17, 2003, BUSTR sent an email to Ms. Goetz and issued to her a fourth letter expressing the need for a site assessment of the release site.

Mr. Silver said that on September 23, 2005, BUSTR was notified of the passing of Mr. Herbert H. Niehaus.

Mr. Silver said that on February 5, 2007, BUSTR received a tier one delineation notification report for the release site. He said that on April 23, 2009, BUSTR directed notice to Ms. Goetz that BUSTR was issuing a no further action (NFA) letter to Mt. Airy Sunoco.

Mr. Silver said that on April 20, 2010, the Petroleum UST Financial Assurance Fund received an eligibility application from Timothy Niehaus, Mr. Herbert Niehaus' son, on behalf of Mt Airy Sunoco.

Mr. Silver stated that Ohio Revised Code section 3737.92(D)(1) provides that a responsible person is not eligible to obtain reimbursement for corrective action costs for an accidental release unless, at the time the release was first suspected or confirmed, the responsible person possesses a valid certificate of coverage issued by the Petroleum UST Release Compensation Board (Petroleum Board) for the UST system from which the release occurred.

Mr. Silver stated that Ohio Revised Code section 3737.92(D)(6) provides that a responsible person is not eligible to obtain reimbursement for corrective action costs for an accidental release unless, at the time the release was first suspected or confirmed, the UST system from which the release occurred was in compliance with rules adopted by the State Fire Marshal under Ohio Revised Code section 3737.88 when the occurrence of the release was first suspected or confirmed.

Mr. Silver said Ohio Administrative Code section 3737-1-07(A)(1), in part, states the Director of the Fund shall issue a determination granting eligibility when an application for eligibility is received within one year of the suspected release or release, whichever is first, was required to be reported to the State Fire Marshal. He stated the version of Ohio Administrative Code rule 3737-1-07(A)(1), which became effective November 24, 1996, provided that all releases that were required to be reported to the State Fire Marshal on or before January 1, 1996, were to have an application for eligibility filed with the Petroleum Board no later than January 1, 1997.

Mr. Silver stated the suspected release was reported to the State Fire Marshal on October 1, 1993 and the suspected release was confirmed by BUSTR on December 5, 1994. He said the eligibility application filed in this case was received by the Petroleum Board on April 20, 2010.

Mr. Silver noted however, the eligibility application at issue states the suspected release or release date within the eligibility is November 4, 2009. He said if this date is applied, the denial of eligibility from the Director of the PUST Financial Assurance Fund issued August 27, 2010, is supported by the absence on November 4, 2009, of a certificate of coverage being possessed by the owner of the release site, indicating a lack of compliance with Ohio Revised Code section 3737.92(D)(1).

Mr. Silver said the late filing of the eligibility application for a release first suspected on October 1, 1993, and confirmed on December 5, 1994, shows a lack of compliance with Ohio Administrative Code rule 3737-1-07(A)(1), in that the eligibility application was received by the Petroleum Board on April 20, 2010.

Mr. Silver said a preponderance of the evidence in the hearing record establishes that a number of prerequisites required to be fulfilled for an application to be found eligible under the PUST Financial Fund were not accomplished during the time periods available for the fulfillment of these prerequisites.

Mr. Silver said based on the findings of fact and conclusions of law presented in his report, he recommended to the Petroleum Board that the denial of eligibility issued on August 27, 2010, comprises valid state action as a matter of fact and law, and should be affirmed. Mr. Hightower moved to accept the hearing officer's recommendation. Mr. Bishilany seconded and a vote followed. All members voted in the affirmative.

Hardship Applications

Chairman Rocco called upon Ms. Richmond to present the hardship application. Ms. Richmond stated the Board's rule 8 provides for an owner experiencing financial hardship to apply for hardship status with the Fund. She said the hardship status allows for the acceleration of the review of claims submitted by the owner. She said this reduces the financial burden the owner would experience if the claims were reviewed and settled in the normal course of business. Ms. Richmond said once the hardship status is granted, the status remains in effect for a one-year period. She said at that time, the owner may reapply and submit updated financial information to be considered for a one-year extension of hardship status.

Ms. Richmond said in determining hardship status, the application and a minimum of two years income tax records are reviewed. She said, in addition to those records, a USEPA financial capacity test is used to evaluate the owner's cash flow and determine if the owner is able to carry debt, in which case the owner could finance the costs of corrective actions over time.

Claim #16065-0001/03/25/96, Owner – Lois Jeffers, dba Midway Petroleum

Ms. Richmond said Mr. & Mrs. Bobby Jeffers were the responsible persons for a 1996 release at 89 South Main Street in Fredericktown, Ohio. She said they sold the site in March 2007, but continued the corrective actions at the site. Ms. Richmond stated that Mr. Jeffers passed away in June 2011 and Mrs. Jeffers filed this second request for hardship status. She said to date, the Fund had reimbursed approximately \$140,000 for corrective actions for this release and one claim package with a face value of \$7,300 is in-house and pending review. Ms. Richmond said in addition to the claim package, a voluntary request for cost pre-approval for \$25,000 is pending review. She said it is anticipated these costs will be incurred within the next year.

Ms. Richmond said that Mrs. Jeffers is 65 years old and is employed part-time as a home health aide. She said based upon the application and a letter Mrs. Jeffers provided with the hardship application, her annual income, including social security, is estimated to be approximately \$20,000 this year. Ms. Richmond said subsequent to Mr. Jeffers death, their home was foreclosed upon and Mrs. Jeffers is

currently renting an apartment. Ms. Richmond said Mrs. Jeffers has no assets with a value greater than \$1,000.

Ms. Richmond said that because the USEPA financial capacity test uses information from the prior two years' tax returns and since Mrs. Jeffers' financial condition changed a few months ago, the financial capacity test results were not reflective of her current situation and were not considered in the decision to recommend the Board approve this application and grant hardship status to Mrs. Jeffers. Mr. Hull moved to approve the hardship application. Mayor Kuchta seconded and a vote was taken. All members voted in the affirmative. The motion carried.

Certificates 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 said that behind Tabs 10 and 11 are listings of facilities that, since the June Board meeting, were issued or denied a program year 2010 or 2011 Certificate of Coverage.

Ms. Richmond explained that the process used to review the fee applications and issue or deny a Certificate of Coverage include a review for completeness to determine full payment has been received; financial responsibility for the deductible is demonstrated; and, the owner has certified with his signature that he is in compliance with the State Fire Marshal's rules. She said if these requirements have been met and if the tanks existed in previous years, a Certificate for the subject tanks was 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 with 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. The Board's rules and the Revised Code make provisions for an appeal of the determination. Throughout this process the Board's staff works with the owner to correct the fee statement record and/or refers the owner to BUSTR to correct the registration record.

Ms. Richmond asked the Board to ratify her actions with respect to the issuance of the 2010 Certificates of Coverage for the five owners of the ten facilities included on the first list behind Tab 10.

Mr. Hull moved to ratify the list of 2010 Certificates of Coverage that were granted. Mr. Epperson seconded. A vote was taken and all of the members were in favor. The motion passed.

Ms. Richmond asked the Board to ratify her actions with respect to the denial of the 2010 Certificates of Coverage for the nine owners of the eleven facilities included on the list behind the Tab 10 blue divider page.

Mr. Hull moved to ratify the list of 2010 Certificates of Coverage that were denied. Mr. Cable seconded. A vote was taken and all of the members were in favor. The motion passed.

Ms. Richmond asked the Board to ratify her actions with respect to the issuance of the 2011 program year Certificates of Coverage for the 81 owners of 1,044 facilities included on the first list behind Tab 11.

Mr. Hull moved to ratify the list of 2011 Certificates of Coverage that were granted. Mr. Cable seconded. A vote was taken and all of the members were in favor. The motion passed.

Ms. Richmond asked the Board to ratify her actions with respect to the denial of the 2011 program year Certificates of Coverage for the eight owners of the nine facilities included on the list behind the Tab 11 blue divider page.

Mr. Hull moved to ratify the list of 2011 Certificates of Coverage that were denied. Mr. Geyer seconded. A vote was taken and all of the members were in favor. The motion passed.

Office Lease

Referencing a previous conversation regarding the office lease, Chairman Rocco announced that the Board just received notice that the new landlord had accepted the lease with the language modifications added by the Board regarding the relocation provision of the lease. He said he expects to have a revised lease to sign in the very near future.

Executive Session

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

Prior to moving into executive session, Chairman Rocco and Mr. Epperson asked to recuse themselves from this portion of the meeting. Chairman Rocco turned the meeting over to Vice Chairman Hull.

Reconvene Meeting

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

Vice Chairman Hull moved to authorize the Attorney General's Office and Special Counsel to initiate investigations of Valero along the lines of the current investigations involving the other major oil companies. Mr. Geyer seconded and a roll call vote followed. The following members voted in the affirmative: Messrs. Hull, Bishilany, Kuchta, Vedra, Stephenson, Geyer, Cable and Ms. Hilvert. Messrs. Rocco and Epperson recused themselves from the vote. Mr. Hightower abstained. There were no nays and the motion passed.

Vice Chairman Hull requested a motion to authorize the Vice Chairman in consultation with the Executive Director to negotiate and reject or accept any offers to settle the Board's subrogation claims against those entities identified by Special Counsel and noted in the September 1, 2010, published demand letters. The final settlement agreement shall require approval by the Board. Mr. Stephenson so moved. Mr. Bishilany seconded. A roll call vote followed. The following members voted in the affirmative: Messrs. Hull, Bishilany, Kuchta, Hightower, Vedra, Stephenson, Geyer, and Ms. Hilvert. Mr. Cable was absent for the vote. Messrs. Rocco and Epperson recused themselves from the vote. There were no nays and the motion passed.

Confirm Next Meeting

Mr. Hightower made a motion to adjourn the meeting. Mayor Kuchta seconded. All were in favor. The next board meeting will be Wednesday, January 11, 2012, beginning at 10:00 a.m.