



# Petroleum Underground Storage Tank Release Compensation Board

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## MINUTES OF THE 171st MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD November 29, 2017

### BOARD MEMBERS IN ATTENDANCE

Jim Rocco  
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

Starr Richmond	Executive Director, PUSTRCB
Madelin Esquivel	Assistant Director, PUSTRCB
Don Leasor	Chief Fiscal Officer, PUSTRCB
Cindy Duann	Claims Supervisor, PUSTRCB
Jonathan Maneval	Administrative Coordinator, PUSTRCB
Scott Ruffing	Environmental Claims Analyst, PUSTRCB
Jennifer Croskey	Assistant Attorney General
Dan Adams	ATC Group Services LLC
Doug Darrah	ATC Group Services LLC
Sean Hetrick	BJAAM Environmental, Inc.
Bill Kennedy	Kennedy Cottrell Richards

Minutes submitted by:

  
Jonathan Maneval  
Administrative Coordinator

**Call to Order:**

Chairman Rocco convened the one hundred seventy-first meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, November 29, 2017.

The following members were in attendance: Jim Rocco; 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.

**Minutes:**

Chairman Rocco asked if there were any comments or questions regarding the minutes from the September 13, 2017 Board meeting and there were none. Vice-Chairman Hull moved to approve the minutes. Mayor Falconi seconded. A vote was taken and all members voted in the affirmative. The minutes were approved as presented.

**BUSTR Report:**

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

Mr. Hills reported that 96 petroleum underground storage tank (UST) release sites are being researched through the responsible party search program for this fiscal year. He noted that this was a slight decrease from the number of sites researched in previous years. The program is used to identify the owners and operators that are responsible for the investigation and cleanup of petroleum releases from UST systems.

Mr. Hills stated that 32 grants totaling \$4.9 million had been awarded through the Abandoned Gas Station Cleanup Grant Program and that five grant applications are currently being reviewed. The program is administered by the Ohio Development Services Agency, in partnership with the Ohio Environmental Protection Agency (OEPA) and BUSTR, and has \$20 million available to local government entities to cleanup abandoned gas station sites. He explained that BUSTR's role in the program, is to determine if the site is classified as "Class C", meaning there is no viable party able to pay for cleanup costs.

Mr. Hills stated that the UST and LUST grant monies for fiscal year 2018 remained at the same amount as the previous year. He said a proposal to increase the annual registration fee is being prepared for consideration and approval. He noted that the annual registration fee has not increased since 1999 and since that time, the requirement of inspecting tanks every three years went into effect. He said the recommendation will be to increase the fee at least \$50 per tank, and it would become effective beginning with the 2018 registration year.

Mr. Hills reported for the week ending November 11, 2017, there were 34 new inspections performed for a total of 4,486 inspections for the three-year inspection cycle. He said that four NFAs (no further actions) were generated during the week ending November 11, 2017, for a total of 63 NFAs for the grant cycle ending September 30, 2018.

Mr. Hills stated that as of November 11, 2017, there were 21,266 registered USTs and 3,609 owners of 7,210 registered facilities. He said that, since the origination of the BUSTR program, the number of NFAs issued is 29,945.

Chairman Rocco asked whether the proposed registration fee increase is being driven by the three-year inspection requirement. Mr. Hills explained that the UST grant monies which fund the inspection program have been cut about 40% over the past five years and that future grant funding is unknown. He said given the grant cuts and the length of time without a fee increase, it is an appropriate time to present a request for the fee increase to the Department of Commerce Director.

Chairman Rocco said from the Fund's perspective, having a good inspection program is important, because if leaks are caught early, the cost to clean them up is less expensive. He said the Board would be supportive of efforts to maintain the inspection program. Vice-Chairman Hull also stressed the importance of keeping the inspection schedule, stating the timing of discovery of a petroleum release versus addressing it is not linear. He said cleanup costs go up dramatically as the material becomes diluted and there is a larger plume over a bigger area.

### **Financial Reports:**

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

#### ***Audit Report***

Mr. Leasor stated that a draft copy of the financial statements and supplementary financial information for the year ending June 30, 2017, had been distributed to each member. He explained that the draft report was being provided with the intent to submit it to the Auditor of State prior to the December 31, 2017 filing deadline. He noted that changes would be made to the draft based upon final review by the Board's Executive Director along with any edits recommended by the auditors. He said the intent is to incorporate any recommended changes by December 15, 2017, and to send the final draft report to the Finance Committee members for their review and comment. He asked the committee members to provide any questions or comments by December 27, 2017, so they can be addressed prior to the filing deadline.

Mr. Leasor then introduced Bill Kennedy, a representative from the accounting firm of Kennedy Cottrell Richards, and asked him to discuss the draft report. Mr. Kennedy stated that the firm had completed the majority of its audit field work in October and were awaiting a couple of pending items that he expects would have no impact to the final results of their audit.

Mr. Kennedy explained that when the final audit is issued, it will include two reports. He said the first report is their opinion on the Board's financial statements and whether they are fairly stated in accordance with generally accepted accounting principles. He said unless something changes during their final review, they anticipate issuing a clean or unmodified opinion on the financial statements. He said their second report concerns their testing of internal controls over financial reporting and material compliance that could impact the financial statements. He said they looked at compliance with laws and regulations that could impact the financial statements and no material noncompliance was detected. He said they again expect to issue a clean report, but if something would change before the reports are issued, it would be communicated to the Board. He said he expects the work to be finalized

so the report could be filed with the Auditor of State prior to the December 31, 2017 submission deadline.

Chairman Rocco asked if there were any recommendations coming out of the audit. Mr. Kennedy said they are still awaiting an actuarial study concerning the claims liability. He said there has been no issues in the past, and does not anticipate any issues this year. Chairman Rocco asked all members to read the draft report, and to contact Mr. Leasor or Executive Director Richmond with any questions or comments.

### ***August and September Financials***

Mr. Leasor said the August and September financials were emailed to each member. He asked if there were any questions or concerns regarding these reports and there were none.

Mr. Leasor reported that as of November 28, 2017, the unobligated account balance is \$27 million. He said this amount includes \$13 million in STAR Ohio (State Treasury Asset Reserve of Ohio) and \$14 million invested in U.S. treasuries and U.S. agency callable bonds. He said at the June meeting, \$9 million was obligated for the payment of claims and the obligated account balance as of November 28, 2017 is \$6.3 million.

Mr. Leasor said tank revenues would be discussed during his presentation of the fee statement statistics report.

Mr. Leasor reported that as of September 30, 2017, we are one quarter into the fiscal year and expenses should be about 25% of the budgeted amount. He said the claims expense for the month of September was approximately \$232,000 and to date, \$2.7 million has been paid for claims for fiscal year 2018.

Mr. Leasor reported that operating expenses for the month of September were approximately \$114,000. He said two temporary service employees are being used to fill vacant positions and the expenses for this line item were about 48% of the amount budgeted. He said total salary costs are where they should be at this time in the fiscal year. He pointed out that employee expenses were 125% of the amount budgeted. He explained that these expenses were for staff parking passes at the LeVeque Tower office location. He said the budget was built with the expectation that the move would occur by October 1, 2017. However, the move was delayed and an additional half month of parking charges were incurred.

Mr. Leasor said postage expenses were 54% of the amount budgeted. He said this was due to postage fees for the final quarter of fiscal year 2017 being paid in August of fiscal year 2018. He said these charges include fees for the annual fee statement mailing, which is sent by certified mail.

Mr. Leasor said overall expenses are at or below where they should be at this time in the fiscal year.

### ***Office Relocation Expenses***

Mr. Leasor said that at the June Board meeting, a budget of the estimated costs to relocate the office was presented. He said \$40,000 was budgeted for the purchase of furniture for the new office location and the actual costs are currently \$3,900 below the budgeted amount. He noted that some additional furniture costs may not have been billed yet. He stated that \$17,210 was budgeted for office space planning, design, and the physical move to the new office location and that the actual costs were at the

budgeted amount. He said that \$3,800 was budgeted for the installation and setup of the internet connection and VoIP services. He explained that the estimated costs were significantly below the actual costs for the installation, which totaled \$14,700. He said an additional \$11,000 of miscellaneous moving-related expenses, such as the replacement of stationary and the mailing of move notifications to tank owners, were incurred. He explained that these costs were expensed under the associated line item within the approved annual budget.

Chairman Rocco asked what the total cost of the move was and Mr. Leasor said the total cost was \$79,100. Vice-Chairman Hull asked how much money is being saved by leasing the new office location. Executive Director Richmond stated that the savings is about \$3-\$4 per square foot and there is about 8,100 square feet in the new office space. Chairman Rocco commented that the cost of the move will be offset by the savings within two or three years. He added that he appreciated all of the hard work Executive Director Richmond and the Board's staff did to relocate the office, and said it was a phenomenal job to accomplish the move and reopen the office with such minimal down time.

#### ***Fee Statement Statistics***

Mr. Leasor reported, as of November 28, 2017, the per-tank fees collected were approximately \$9.2 million, which represents 97% of the billed amount. He said between July 1, 2017, and November 28, 2017, a total of \$135,000 was collected for prior years' fees, net of refunds of \$18,950.

Mr. Leasor said for the 2017 program year, 15,400 tanks were billed at the standard deductible (\$55,000) per-tank fee and about 5,500 tanks were billed at the reduced deductible (\$11,000) per-tank fee. He reported, as of November 28, 2017, the fees had been paid at the standard deductible rate for slightly over 14,600 tanks and at the reduced deductible rate for 5,560 tanks. He said fees for a total of 20,183 tanks had been paid by 3,111 owners. He said this compares to fees being paid for 20,236 tanks by 3,139 owners for the same period of time in the prior year.

Chairman Rocco asked if this means there are 700 tanks for which fees are never paid. Mr. Leasor explained that payment for a portion of the tanks will likely be received as the program year continues and the accounts are certified to the Attorney General's Office for collection. He noted there is a small percentage of tank owners that simply do not pay. Chairman Rocco asked if there has been any changes to the number of tank owners electing coverage at the reduced deductible, and Mr. Leasor said that about 26% of tank owners elect the reduced deductible coverage and this percentage has been fairly stable.

Mr. Leasor said for the program year ended June 30, 2017, fees had been paid for a total of 20,560 tanks by 3,207 owners.

Mr. Leasor said the \$9.4 million collected to date represents 98.8% of the \$9.5 million budgeted for the current 2017 program year. He said so far for program year 2017, fees had been received for 99.2% of the 20,350 tanks budgeted.

#### **Compliance and Fee Assessment Report:**

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

Ms. Esquivel reported, as of October 31, 2017, refunds totaling \$18,950 have been paid for the 2017 program year. She said, as of October 31, 2017, there are 2,825 pending refunds totaling \$1.4 million. She said that \$4,595 in refunds was used to offset prior years' outstanding fees. She said the refunds paid and the credits to outstanding fees total \$23,545, which is 10% of the refund goal of \$225,000 that was set for the program year.

Ms. Esquivel reported, as of October 31, 2017, the fees collected by the Attorney General's Office and Special Counsel less collection costs totaled \$29,091. She said no accounts have been certified to the Attorney General's Office for collection since July 1, 2017. She said the next certification will occur in the month of January and will include the 2017 program year's fees that are outstanding.

Ms. Esquivel said two Orders Pursuant to Law were under appeal, and information to support the appeals is expected. She said that one Determination to Deny a Certificate of Coverage is under appeal and a hearing for that appeal was held on August 3, 2017.

Ms. Esquivel stated that two 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 November 20, 2017, a total of 2,748 Certificates of Coverage have been issued thus far for program year 2017. She said there are 385 Applications for Certificates of Coverage currently in process. She said that as of November 20, 2017, a total of 12 notifications of Pending Denial had been issued, and no Determinations to Deny a Certificate of Coverage had been issued. She pointed out that since November 20, 2017, two Determinations to Deny a Certificate of Coverage were issued and are included on the list of denied certificates for ratification by the Board at today's meeting.

Ms. Esquivel stated that there are 49 uncashed refund checks, totaling \$38,346. She said there are six owners with pending refunds totaling \$8,890 who have been sent letters notifying them that more information is needed before their refunds may be issued. She said there are 27 owners with pending refunds totaling \$31,245 for which information had been requested, but no responses have been received.

Chairman Rocco asked at what point the refunds for the owners that do not respond with the requested information are taken off the books. Ms. Esquivel explained that two requests for information are sent by certified mail and, if no response is received, then the money is reapplied to the account and it will no longer show as a pending refund. She noted that if the owner was to provide the information necessary to demonstrate the refund is valid in the future, then the refund would be paid out to the owner.

### **Claims Reports:**

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

Ms. Duann said that the first page of the claims report presents statistics for all claims received since the inception of the Fund. She said claim applications have been received for a total of 3,106 Fund

eligible sites, and the face value of these claims totals \$475 million. She explained that after subtracting the \$102.6 million of deductible used for settled claims along with the \$6 million of deductible remaining for open claims, the total net value is \$366 million. She explained that after subtracting the \$86.5 million of disallowed costs and the total payments of \$249 million, the result is the total maximum liability of in-house open claims, which is \$30.7 million. She said that using the historical claim payout ratio of 75%, the actual anticipated claim liability of unpaid in-house claims is about \$23 million.

Ms. Duann stated that a total of 517 Fund eligible sites have been cleaned up exclusively under BUSTR's risk based corrective action (RBCA) rules and had an average cleanup cost of about \$77,300 per site. She said of the 517 Fund eligible sites, only 276 sites reached the deductible and the average cleanup cost for these sites was approximately \$120,500.

Ms. Duann reported that as of November 1, 2017, a total of 1,524 claims with a total face value above the deductible amount were pending review. She noted that claims received in the month of August 2017 are currently being reviewed by the staff.

Ms. Duann stated that as of November 1, 2017, a total of 16 claim settlement determinations were under appeal. She noted that since the September Board meeting, four new claim settlement appeals were received and three claim settlement appeals had been resolved.

Ms. Duann reported that, during the months of July through October, 186 claims were received, a total of 192 claims were settled, and an additional 19 below deductible claims submitted for sites that had been issued an NFA more than a year ago were closed.

Ms. Duann stated that the total claim settlement offer for program year 2017 was \$2.1 million and the average per claim payout was about \$11,100. She pointed out that this was slightly higher than the previous years' averages. She said that the average claim payout ratio was about 76% and the average of claimed costs that were disallowed was about 20% of the face value. She said these numbers are consistent with the previous years' averages.

Ms. Duann said that since BUSTR's new corrective action rule became effective on September 1, 2017, the claims staff have been regularly investing time to study the rule changes and technical guidance documents so that future claims can be properly reviewed and evaluated. She said it will be particularly challenging for the claims analysts since they will now be evaluating claims with clean-up work being performed under BUSTR's 1999, 2005, 2012, and 2017 corrective action rules.

Chairman Rocco commented that EDB (dibromoethane) was added to the list of chemicals of concern (COCs) and the analytical detection limit may be an issue. In addition, the cost to remediate sites with EDB contamination could be significant. Ms. Duann said the forms used by the staff will be updated to address the new COCs and the reasonable cost database will also be updated. She noted that some of BUSTR's rule changes impacted the submittal deadlines and will also affect the Board's claim filing deadlines. Chairman Rocco said the Board's Rules Committee will be meeting in January to address rule revisions that may be needed as a result of the BUSTR rule changes.

Ms. Duann said that, during the months of July through October, 28 eligibility applications were received and 29 eligibility determinations were issued. She said of the 29 determinations, 16 were denied, including 12 being denied for no release being demonstrated or no corrective action work being required by BUSTR. She explained that the remaining four applications were denied as incomplete applications or for noncompliance issues. She said currently, 32 applications are pending review and eight determinations are under appeal.

Ms. Duann reported that 34 cost pre-approval requests had been received in the months of July through October and 36 cost pre-approval notifications were issued. She said, as of November 1, 2017, a total of 31 requests for cost-pre-approval were pending review. She commented that the staff has made progress in reviewing several annual RAP (remedial action plan) cost pre-approval requests that involved the operation and maintenance costs of dual phase extraction remediation systems.

### **Finance Committee Report:**

Chairman Rocco said that prior to the Board meeting, the Finance Committee met to review the Fund's five-year financial projections and to discuss the annual per-tank fee and deductible amounts for the upcoming program year, the Fund's investments, and some policies concerning financial matters.

Chairman Rocco stated that \$14 million dollars is currently invested in U.S. treasuries and U.S. agency callable bonds and these investments are laddered with \$4-\$6 million maturing annually. He noted that the last investment is set to mature in 2020. He said, as a result of the committee's discussions, they are recommending to the Board that \$2 million of the \$17 million being held in the STAR Ohio accounts be invested into U.S. agency callable bonds with a three-year term set to mature in 2021. He explained that although the interest rate in STAR Ohio has improved to about 1.25%, the hope is to obtain higher interest yields by investing in the bonds. He said that since the monies are unobligated and there is not a need for immediate access to it, investing in long term securities makes sense.

Mr. Pisula commented that the cash balance in the STAR Ohio account has grown over the past few years, due to the revenues coming in exceeding expenses and claims being paid. He said he agreed that rebalancing the investment portfolio accordingly makes sense. Chairman Rocco asked if there were any additional discussion or comments and there was none. He then requested a motion to approve the investment of \$2 million and to authorize the Executive Director and the Chief Fiscal Officer to place \$2 million, from the unobligated account into U.S. Agency callable bonds with a maturity date of 2021, and to reinvest these funds in like securities upon maturity, unless otherwise directed by the Board. Mr. Bryant so moved and Mr. Stephenson seconded.

Vice-Chairman Hull asked whether the motion should also authorize the reinvestment of the current investments when they reach maturity. Chairman Rocco explained that the Board approved the reinvestment of the funds upon maturity when the original motions concerning those investments were passed. He asked if there was any other discussion or questions regarding the investments and there was none. A vote was taken and all were in favor. The motion passed.

Chairman Rocco said the committee also discussed the annual per-tank fees and noted that there had been no fee changes for the past two years. He said that prior to that, the fees had been reduced. He said the committee considered the unobligated account balance against the cash flow analysis going



out for the next five years and found it reasonable to lower the fees another \$50 in the upcoming program year. He said the committee's recommendation is to modify the Board's rule to reduce the per-tank fee to \$350. Mr. Stephenson affirmed the recommendation, and Chairman Rocco then requested a motion to amend paragraph (I) of Ohio administrative code 3737-1-04 to decrease the annual fees from \$400 per tank to \$350 per tank. He explained that by setting the standard deductible fee to \$350 per tank, the fee for coverage at the reduced deductible would automatically set to \$550 per tank.

Mr. Pisula asked whether the Fund has established a target cash balance. He pointed out that Ms. Duann reported a maximum claim liability of about \$30 million in her report and the balance of the Fund is also about \$30 million. Chairman Rocco said there is not a specific balance that needs to be maintained and added that the Board's rules authorize the assessment of a supplemental fee, if there were to be too little cash in the Fund. Mr. Geyer asked what the annual financial impact would be to the Fund. Chairman Rocco explained that there are a little over 20,000 tanks, so there would be a reduction to the Fund's revenues of about \$1 million annually. He noted that annual income is currently about \$8 million, so it would reduce to \$7 million.

Vice-Chairman Hull said the committee also considered whether a fee reduction might impact the agency's operations or service and noted that since there is plenty of cash on hand, it would have no impact on the staff's ability to process current claims. Chairman Rocco said since a portion of the investments come due every year, the investment monies could be used to offset any deficits that might arise. He asked if there were any other questions and there was none. A vote was taken and all were in favor. The motion passed.

### **New Business:**

#### ***Hardship Applications***

Chairman Rocco called upon Starr Richmond, Executive Director, to present the hardship applications.

Ms. Richmond stated that the Board's rule 3737-1-08 provides for an owner experiencing financial hardship to apply for hardship status with the Fund. She said granting hardship status allows for the acceleration of the review of the claims submitted by the owner. Ms. Richmond noted that granting hardship status does not increase the amount of reimbursement to the tank owner. She stated that accelerating the review of the claim reduces the financial burden the owner would experience if the claims were reviewed and settled in the normal course of business. She said, once granted, the hardship status remains in effect for a one-year period and at that time, the owner may reapply for hardship status.

Ms. Richmond stated that in determining hardship status, the application and a minimum of two years of income tax records are reviewed. She said, in addition, a U.S. Environmental Protection Agency (U.S. EPA) financial capacity test is used to evaluate the owner's cash flow and determine whether the owner is able to carry debt, in which case, the owner could finance the costs of corrective actions over time.

**Claim # 4808-0001/02/02/90, Owner – Harold Saurers d/b/a Rod Kick Marathon**

Ms. Richmond stated that Harold Saurers is the responsible person for a 1990 release at 1020 ½ Spruce Street in Wooster, Ohio. She said this is his sixth request for hardship status and, to date, the Fund has reimbursed \$254,000 for corrective actions for this release.

Ms. Richmond said there is currently one unsettled claim in-house totaling \$13,600 and the estimated corrective action costs for the next year are \$115,000.

Ms. Richmond said that based on the information provided in the application, Mr. Saurers' annual household expenses exceed his annual income of \$27,000, which is from a fixed annuity and social security benefits. She said after the removal of the USTs, Mr. Saurers continued to operate an auto repair shop on the premises until October 2016. She said in March 2017 the property was sold for \$35,000 and the proceeds were used to pay outstanding loans related to the business.

Ms. Richmond said that based on the U.S. EPA financial capacity test, it is highly unlikely that Mr. Saurers has the ability to afford the corrective action costs anticipated to be incurred in the next 12 months.

Ms. Richmond recommended the Board approve the application and grant hardship status to Mr. Saurers. Vice-Chairman Hull so moved and Mr. Fleming seconded.

Mr. Geyer asked whether the annual renewal of hardship status is required by rule and Ms. Richmond confirmed that it is. Mr. Geyer commented that he did not recall the Board ever denying hardship status after it being initially approved, and recommended that hardship status be granted for a two-year period instead of the one-year period. He said this would reduce the administrative burden on the tank owners and to the Board's staff. Chairman Rocco said that it would be rare for the financial status to change from year to year, and it is a good suggestion to amend the rule. Vice-Chairman Hull agreed. Chairman Rocco asked if there was any other discussion and there was none. A vote was taken and all members voted in the affirmative. The motion passed.

**Claim # 22239-0001/08/03/15, Owner – Harjasneet, LLC**

Ms. Richmond said Harjasneet, LLC is the responsible party for a 2015 release that occurred at 4871 Dixie Highway in Fairfield, Ohio, when a lightning strike hit the tanks and caused them to explode. She said, as a member of the LLC, Harmit Singh is requesting the Board grant hardship status to the LLC. This is his third request for hardship status and to date, the Fund has reimbursed \$172,000 for corrective actions for this release.

Ms. Richmond said there is currently one unsettled claim in-house with a face value of \$19,000 and the cost of corrective action work expected to be conducted over the next 12 months is estimated to be \$113,000.

Ms. Richmond noted the application provided no financial information, such as property owned or unpaid mortgages. She said in order to do the analysis, the information was taken from the income tax records which were included in the members' notebooks.

Ms. Richmond said the facility is currently closed and is not generating any revenue. She said the depreciated value of the building and land is \$475,000. She said that, based upon the information provided in the hardship application, the U.S. EPA financial model for corporations, which is known as ABEL, estimates a less than 50% probability that the LLC can afford the \$113,000 in corrective action costs.

Ms. Richmond recommended the Board approve the application and grant hardship status to Harjasneet, LLC. Vice-Chairman Hull so moved and Mayor Falconi seconded. Chairman Rocco asked whether the business is operating at the location and Ms. Richmond said the facility is closed. However Mr. Stephenson stated that he believed the facility is open. Mr. Leasor noted that a third party had been leasing the facility but no income was reported on the 2016 tax forms. He said that he contacted Mr. Singh and was told that no income was received for the property. Mr. Pisula noted that about \$105,000 was reported as rental income on the tax forms. Mr. Leasor said that this income was listed as environmental services later in the tax forms and is equivalent to the amount of claim payments that were paid in 2016.

Chairman Rocco commented that if the store is operating, it doesn't make sense that no income was being generated and recommended that the vote concerning the hardship status be tabled until the January Board meeting when additional information could be provided. There were no objections.

#### **Certificates of Coverage – Ratifications:**

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

Ms. Richmond said the lists behind Tabs 9 and 10 are listings of facilities that, since the September Board meeting, had been issued or denied a program year 2016 or 2017 Certificate of Coverage.

Ms. Richmond said the process used to review the fee applications and issue or deny a Certificate of Coverage includes a review for completeness to determine full payment was received; financial responsibility for the deductible has been demonstrated; and the owner has certified with his signature that he is in compliance with the State Fire Marshal's rules for the operation and maintenance of petroleum underground storage tanks. She said, if these requirements are met, the tanks existed in previous years, and a Certificate for the subject tanks has been issued to the owner in at least one of the prior two years, then a Certificate of Coverage is issued.

Ms. Richmond explained that if deficiencies or compliance issues are 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.

Ms. Richmond said the Board's rules and the Revised Code make provisions for an appeal of the determination. She said that throughout this process, the Board's staff works with the owner to correct the fee statement record and, if necessary, refers the owner to BUSTR to correct the registration record.

Ms. Richmond requested the Board ratify her actions with respect to the issuance of the 2016 program year Certificates of Coverage for the 21 facilities included on the list behind Tab 9.

Mr. Bryant 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. Richmond requested the Board ratify her actions with respect to the denial of the 2016 program year Certificates of Coverage for the six tanks located at the three facilities included on the list behind the Tab 9 green divider page.

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

Ms. Richmond requested the Board ratify her actions with respect to the issuance of the 2017 program year Certificates of Coverage for the 295 owners of 955 facilities included on the list behind Tab 10.

Vice-Chairman Hull moved to ratify the issuance of the 2017 Certificates of Coverage for the facilities listed. Mr. Bryant seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Richmond requested the Board ratify her actions with respect to the denial of the 2017 program year Certificates of Coverage for the seven tanks located at the two facilities included on the list behind the Tab 10 green divider page.

Vice-Chairman Hull moved to ratify the denial of the 2017 Certificates of Coverage that were listed. Mr. Fleming seconded. A vote was taken and all members were in favor. The motion passed.

### ***Board Member Vacancies***

Chairman Rocco asked whether there was any other business before the Board. Mr. Stephenson asked how many seats on the Board were currently vacant and inquired if anything was being done to fill the vacancies. Chairman Rocco said that three seats on the Board are currently unfilled and 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 and is not associated with the petroleum industry.

Chairman Rocco said that he and Vice-Chairman Hull had reached out to a number of individuals and also to OPMCA (Ohio Petroleum Marketers & Convenience Store Association) and the dealer association to solicit candidates to recommend to the Governor for appointment, but so far there has been little interest. He invited the Board members to recommend individuals to fill the vacant seats and noted there is an application that can be completed and submitted online. He pointed out 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.

### **Executive Session:**

Chairman Rocco 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. Mayor Falconi seconded. Chairman Rocco called for a roll call. The following members voted in the affirmative: Messrs. Bryant, Falconi, Fleming, Geyer, Hills, Hull, Pisula, Stephenson, and Rocco. There were no nays. The motion passed. Chairman Rocco and Mr. Fleming requested to be recused from the executive session and the meeting was turned over to Vice-Chairman Hull.

### ***Reconvene Meeting***

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

Vice-Chairman Hull stated that the Board had been discussing the claims that are related to or potentially related to matters of litigation and its decision to suspend the processing of certain claims. He said that as a result of their discussions, the Board's counsel has recommended that the Board take certain action to allow specific claims to be processed. He then made a motion to instruct the Executive Director to continue to suspend the review and settlement of any and all claim reimbursement applications filed by or on behalf of any responsible person against whom the Board has authorized the filing of a complaint in litigation until such time the litigation is settled or otherwise ended with the exception that the Executive Director may continue to review and settle specific claim reimbursement applications as to which the Attorney General's Office has informed her that it does not intend to or no longer intends to seek damages related to the petroleum release at issue on the applications. Mayor Falconi seconded.

Vice-Chairman Hull then asked the Board's Assistant Attorney General, Jennifer Croskey, to comment further. Ms. Croskey explained that as litigation with the various oil companies proceeds, information is received through discovery that helps the Attorney General's Office better understand the insurance coverage the companies had. She said that in the Board's case against BP, the discovery is coming to an end and there is a pretty good picture of what BP's insurance program looked like. She said that at this point, there are certain claims that they are comfortable recommending to be processed, but the review and settlement of the identified claims would be contingent upon BP executing an agreement similar to settlement agreements used in other types of cases in the past.

Vice-Chairman Hull said if the claim applicant demonstrates the release that is the subject of the application was clearly outside of an insurance coverage period, then the Attorney General's Office could make a determination that the claims be processed, provided the applicant takes the appropriate actions and provides the assurances necessary to prevent the Board from compromising its position elsewhere. He said the agreement would be site specific and would not establish any precedence over other issues.

Chairman Rocco explained that all claims are suspended, if the responsible party is in litigation with the Board. He said the proposed motion allows certain sites that are excluded from the litigation to have claims processed for those specific sites. Chairman Rocco asked if there were any other questions or discussion and there was none. A vote was taken and all were in favor. The motion passed.

### **Confirm Next Meeting and Adjourn:**

Chairman Rocco said that the next Board meeting will be held on Wednesday, January 10, 2018, at 10:00 a.m. He said the Rules Committee will be meeting immediately following the Board meeting

and asked that any members who have any comments or recommended changes to the rules, contact Executive Director Richmond prior to the meeting.

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