



Petroleum Underground Storage Tank Release Compensation Board

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MINUTES OF THE 176th MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD September 12, 2018 – 10:00 a.m.

BOARD MEMBERS IN ATTENDANCE

Jim Rocco
John Hull
Steve Bergman
Don Bryant
Ron Falconi
Tom Stephenson

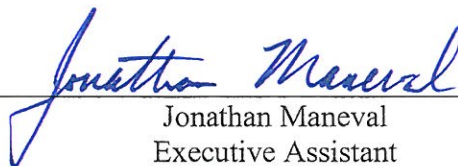
EX-OFFICIO MEMBERS IN ATTENDANCE

Bill Hills, representing Director Jacqueline Williams, Ohio Department of Commerce
Donna Waggener, 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
Don Leasor	Chief Fiscal Officer, PUSTRCB
Cindy Duann	Claims Supervisor, PUSTRCB (Former)
Rick Trippel	Claims Supervisor, PUSTRCB
Jonathan Maneval	Executive Assistant, PUSTRCB
Cindy Knight	Senior Accounts Coordinator, PUSTRCB
Leigh Bayer	Assistant Attorney General
Keith O’Korn	Assistant Attorney General
Dan Adams	ATC Group Services LLC
Jodi Handlin	BJAAM Environmental, Inc.
Frank Reed Jr.	Frost Brown Todd LLC

Minutes submitted by:


Jonathan Maneval
Executive Assistant

Call to Order:

Chairman Rocco convened the one hundred and seventy-sixth meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, September 12, 2018.

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

The following members were not present: Scott Fleming and Stephen Hightower II.

Minutes:

Chairman Rocco asked if there were any comments or questions regarding the minutes from the June 13, 2018 Board meeting and there were none. Vice-Chairman Hull moved to approve the minutes. Mr. Bergman seconded. A vote was taken and the following members voted in the affirmative: Ms. Waggener and Messrs. Bergman, Hills, Hull, Rocco, and Stephenson. Messrs. Bryant, Falconi, and Pisula abstained. The minutes were approved as presented.

Election of Officers and Committee Member Appointments:

Chairman Rocco requested motions from the floor for the nomination of officers for the upcoming year. Vice-Chairman Hull made a motion to re-elect Jim Rocco as the Chairman. Mayor Falconi seconded. Hearing no other nominations, a vote was taken and all were in favor. Mr. Rocco will remain as Chairman.

Mr. Stephenson made a motion to re-elect John Hull as the Vice-Chairman. Mayor Falconi seconded. Hearing no other nominations, a vote was taken and all were in favor. Mr. Hull will remain as Vice-Chairman.

Rules and Finance Committee Appointments

Chairman Rocco stated that the Chairman and Vice Chairman serve on both the Finance and Rules Committees. Chairman Rocco then appointed Mr. Stephenson and the designee from the State Treasurer's Office to serve on the Finance Committee. He appointed Messrs. Bergman, Bryant, and Falconi to serve on the Rules Committee.

2019 Meeting Dates

Chairman Rocco set the following meeting dates: January 9, February 13 (tentative), March 13, June 12, September 11, and November 20, 2019. All meetings will begin at 10:00 a.m.

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 two LUST (leaking underground storage tank) grant funded positions are currently vacant due to the death of a release prevention coordinator and an intermittent employee

accepting a full-time job. He said that the intermittent employee had been assisting as file room clerk and explained that internal personnel adjustments have been made in order to timely respond to public records requests. He noted that both positions are unfilled due to a hiring freeze.

Mr. Hills stated that, during this fiscal year, 65 sites with petroleum underground storage tank (UST) releases are being researched to identify the parties responsible for the investigation and cleanup of the releases. He reported that 49 grants had been awarded through the Abandoned Gas Station Cleanup Grant Program. He noted that previous BUSTR reports had indicated that 51 grants had been awarded, but two grants were disqualified by the Ohio Development Services Agency. He stated that about \$9.68 million of the \$30 million available to local government entities to cleanup abandoned gas station sites had been expended.

Mr. Hills stated that BUSTR had been awarded \$1.983 million in LUST grant monies for fiscal year 2019. He noted the grant amount did not change from the previous year, but that it included an additional \$40,000 of funds remaining from fiscal year 2018 had been carried forward. He said the UST grant request for fiscal year 2020 is being finalized and noted the current UST grant was \$804,000. He stated that federal funding through the UST and LUST grants had been cut substantially in the previous four to five years.

Mr. Hills reported that certified installer and certified inspector courses will be held at the State Fire Marshal Academy in February and March of 2019. He explained that these courses were designed specifically for cities with delegation of authority and over the past six months there has been an increase in fire departments seeking delegation of authority from the State Fire Marshal.

Mr. Hills said BUSTR had increased the annual registration fee from \$50 per tank to \$100 per tank and registration fees totaling \$1.844 million had been collected for the fee cycle. He pointed out this was a \$900,000 increase from the previous year.

Mr. Hills reported, for the week ending September 1, 2018, there were 54 new inspections performed for a total of 6,346 inspections for the three-year inspection cycle. He said that 16 NFAs (no further actions) were generated during the week ending September 1, 2018, for a total of 438 NFAs for the grant cycle ending September 30, 2018.

Mr. Hills stated that, as of September 1, 2018, there were 21,202 registered USTs and 3,556 owners of 7,169 registered facilities. He said BUSTR had granted no further action status for 30,312 petroleum release incidents throughout Ohio.

Financial Reports:

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

Audit Update

Mr. Leasor said the auditors are scheduled to begin their in-house portion of the audit in late October. He said the audited financial statements are due to the Auditor of State by December 31, 2018, and the goal is to have the audited financial statements presented at the November Board meeting in order to meet the December deadline.

May, June, and July Financials

Mr. Leasor said the May, June, and July 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 September 11, 2018, the unobligated account balance is \$26.8 million. He said this amount includes \$10.8 million in STAR Ohio and the custodial account, and the \$16 million invested in U.S. treasuries and U.S. agency callable bonds. He said the obligated account balance for the payment of claims is just under \$7.4 million.

Mr. Leasor said tank revenues would be discussed as part of his fee statement statistics report.

Mr. Leasor reported that, as of July 31, expenses should be about 8.3% of the amounts budgeted for fiscal year 2019. Mr. Leasor said the claims expense for the month of July was \$140,600, and approximately \$1,640,000 had been paid for claims since July 1, 2018. He said this is 18.2% of the \$9 million obligated by the Board for the payment of claims for fiscal year 2019 and noted the amount is on target for where it should be to be at this point in the fiscal year.

Mr. Leasor said the operating expenses for the month of July were about \$171,200. He pointed out that rent expense was 16.4% of the amount budgeted. He said this was due to lease payments for the months of July and August both being made in the month of July. He said that printing and copying expenses were about 14.7% of the amount budgeted, and explained that costs for the printing of Certificate of Coverage forms in June were not billed and paid until July.

Mr. Leasor reported that legal and professional expenses were 10.4% of the amount budgeted. He said that fees for the Assistant Attorney General services from the 4th quarter of fiscal year 2018 were paid in the month of July. He noted that telephone expenses were 16% of the amount budgeted. He explained that this was due to the payment for both the months of July and August being made in July.

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

Mr. Pisula asked when the Finance Committee would be meeting next and Chairman Rocco said the committee would be meeting prior to the November Board meeting. Mr. Pisula commented that the Fund's cash allocation appears to be 10 times the Board's annual operating expenses and the Finance Committee should probably reassess how the Fund is currently invested and Chairman Rocco agreed.

Fee Statement Statistics

Mr. Leasor said as of September 11, 2018, the per-tank fees collected for the current 2018 program year were approximately \$8.1 million, which represents 96% of the billed amount. He said that between July 1, 2018, and September 11, 2018, approximately \$94,200 was collected for prior years' fees, net of refunds of \$31,370.

Mr. Leasor said, for the 2018 program year, 15,270 tanks were billed at the standard deductible (\$55,000) per-tank fee and about 5,560 tanks were billed at the reduced deductible (\$11,000) per-tank fee. Mr. Leasor said as of September 11, 2018, the fees had been paid at the standard deductible rate for 14,450 tanks and at the reduced deductible rate for about 5,370 tanks. He said fees for a total of

19,828 tanks had been paid by 3,006 owners. He said this compares to fees being paid for 20,054 tanks by 3,082 owners for the same period of time in the prior year.

Mr. Leasor said, for the program year ended June 30, 2018, fees had been paid for a total of 20,500 tanks by 3,166 owners.

Mr. Leasor said the \$8.2 million collected to date represents 96.7% of the \$8.45 million budgeted for the 2018 program year. He said so far, for program year 2018, 97.5% of the fees had been received for the 20,320 tanks budgeted.

Compliance and Fee Assessment Report:

Chairman Rocco called on Cindy Knight, Senior Accounts Coordinator, to present the compliance and fee assessment report.

Ms. Knight explained that the totals presented in the program year 2018 column are from July 1 through August 31, 2018. She said as of August 31, 2018, refunds totaling \$29,352 had been paid to 23 owners and noted the amount of pending refunds totals \$1,324,874. She stated that \$16,540 in refunds was used to offset outstanding fees that had been identified.

Ms. Knight explained that the compliance staff has a goal to process \$225,000 in refunds each year; this amount includes refunds paid and refund credits that are applied to outstanding fees. She said as of August 31, 2018, the refunds paid and the refunds used to offset outstanding fees total \$45,892, which is 20% of the compliance section's goal. She commented that there is now a staff member dedicated to managing refunds and preparing refunds for payment. She explained that the position has been vacant since 2015, and it is now likely that the staff will meet or even exceed the goal this program year.

Ms. Knight reported that as of August 31, 2018, the fees collected by the Attorney General's Office and Special Counsel less collection costs totaled \$64,470. She said no accounts have been certified to the Attorney General's Office for collection since July 1, 2018, and the next certification is expected to occur in October.

Ms. Knight said five Orders Pursuant to Law were under appeal and information to support these appeals is expected. She said one Determination to Deny a Certificate of Coverage was appealed, the Board upheld the Director's Determination, and it was then appealed to the Court of Common Pleas.

Ms. Knight said 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. Knight reported that, as of September 5, 2018, a total of 2,496 Certificates of Coverage had been issued for program year 2018. She noted that 3,066 Certificates of Coverage had been issued for program year 2017. She said there are 500 Applications for Certificates of Coverage currently in process. She said that, as of September 5, 2018, there was one owner with an unresolved Pending

Denial of the Certificate of Coverage, and one owner had been issued a Determination to Deny a Certificate of Coverage.

Ms. Knight stated that there are 47 uncashed refund checks that total \$40,210. She said more information has been requested from 11 owners with possible refunds totaling \$14,735. She said there are an additional 36 owners with possible refunds totaling \$67,380 that have not responded to the final request for more information.

Vice-Chairman Hull asked if there is a process for closing out refunds for unresponsive tank owners. Executive Director Richmond explained that for uncashed checks, if the money remains unclaimed for five years, then the money is forfeited to the Fund. She said for those pending refunds for which the requested information has not been received, the money sits in a pool until such time that a determination is made whether the refund may be processed in whole or in part, without the requested information.

Claims Reports:

Chairman Rocco announced that Cindy Duann, the Claims Supervisor, would be retiring at the end of September and this will be her final presentation of the claims reports. He then called on Ms. Duann to present the reports.

Ms. Duann said as of September 4, 2018, the total maximum liability of in-house open claims is \$29.6 million. She said that using the more current claim payout ratio of 80%, the actual anticipated claim liability of unpaid in-house claims is about \$23.7 million.

Ms. Duann reported that, as of September 4, 2018, a total of 1,522 claims with a total face value above the deductible amount were pending review. She noted that claims received in the months of June and July 2018 are currently being reviewed by the staff.

Ms. Duann stated that, as of September 4, 2018, a total of 13 claim settlement determinations were under appeal. She noted that this is lower than the average of 18 claim settlement determinations that are typically under appeal.

Ms. Duann reported that, during the 2017 program year, 590 claim applications were received and 695 claims were either settled or closed. She noted the number of claims received and settled are both lower than the previous year's average. However, the total claim settlement offer was \$8.2 million which was higher than the previous year. She said this was due to the face value of the claims and the claim payout ratio being higher. She said the average per claim payout was about \$13,000 and the average claim payout was 82.2% of the net value. She noted the average percentage of disallowed costs at 14.8% was lower than previous years.

Ms. Duann said that, in the months of July and August, 114 claims were received, and a total of 63 claims were settled. She mentioned that due to the transition and training of personnel, the number of claim settlements will likely remain low during the next few months.

Ms. Duann said that, during the 2017 program year, 78 eligibility applications were received and that 82 eligibility determinations were issued. She said of these eligibility determinations, 42 were approved and 40 were denied. She said the denied applications were primarily denied for no release being demonstrated or no corrective action work being required by BUSTR.

Ms. Duann said that, in the months of July and August, 10 eligibility applications were received and that nine eligibility determinations were issued. She said currently, 32 applications are pending review and four determinations are under appeal.

Ms. Duann reported that during the 2017 program year, a total of 129 requests for cost pre-approval had been received and 132 cost pre-approval notifications had been issued. She pointed out that the number of cost pre-approval requests for new remedial action plans and for annual remedial action plan activities remain high, indicating there are a high number of releases requiring long term corrective action work.

Ms. Duann reported that during the months of July and August, 16 requests for cost pre-approval had been received and 23 cost pre-approval notifications had been issued. She said currently, 26 cost pre-approval requests are pending review.

Vice-Chairman Hull commented that he was somewhat intimidated by Ms. Duann's reports when he first joined the Board, but found comfort in knowing that she really understood everything going on. He commended her for doing a great job in presenting a competent face for the staff to the community. He said that she's been fair with claim settlements and has really done a wonderful job.

Unfinished Business:

Subrogation – The Hartley Company vs. Jones & Frank

Claim # 4882-0013/07/10/14, Facility – Troy Gulf Station

Chairman Rocco said that Frank Reed from the law firm Frost Brown Todd LLC was attending the meeting and had asked to address the Board concerning certain litigation involving the Board. Chairman Rocco said that because the Board is now a party in the case, any discussion of the matter should be held until the Board adjourned into executive session later in the meeting. He then called on Mr. Reed to address the Board. However, Assistant Attorney General Keith O'Korn interjected and asked to introduce himself, and Chairman Rocco agreed.

Mr. O'Korn stated that Mr. Reed's client has sued the Board and served the Board with a complaint on September 4, 2018. Mr. O'Korn explained that he is the Board's assigned counsel in the litigation and was attending the Board meeting in order to present and discuss the pending court action during the executive session in accordance with the Ohio Meetings Act.

Mr. O'Korn stated that Mr. Reed did not notify the Attorney General's Office that he would be attending the meeting with the intent of speaking to the Board about the pending court action and felt it inappropriate for him to talk about the case. He expressed that he and the Attorney General's Office objected to Mr. Reed addressing the Board and stated that their recommendation is that the Board not discuss the matter with Mr. Reed at all.

Mr. Reed apologized to Mr. O’Korn saying the reason he had not notified the Attorney General’s Office of his intention to address the Board was due to the unexpected death of his mother. He then provided a summary of the events that occurred at a gas station owned by the Hartley Co. in Troy, Ohio. He explained that a pump at the station was not operating properly and the Hartley Co. hired a UST maintenance company known as Jones & Frank to investigate and fix the issue. He said a technician performed some work on a swift check valve and advised the station manager that the UST system had been repaired. However, thereafter product inventory reconciliation records indicated there was a loss of product and the Hartley Co. sent Jones & Frank to investigate the issue again. He said the technician believed the problem to be a totalizer on a dispenser and the technician replaced it. After continued indications of product loss, the Hartley Co. sent their own technicians to the station and found fuel leaking from the swift check valve which had not been properly tightened. He said the leak resulted in 8,800 gallons of fuel leaking from the tank system and the corrective actions to clean up the release are estimated to be about \$1.2 million.

Mr. Reed stated that the Hartley Co. believes Jones & Frank to be responsible for the release as a result of a faulty repair by its technician, and a complaint was filed against them in the Miami County Court of Common Pleas in order to recover money for the damages. He said the case was moved to federal court and the federal judge decided the Board was a necessary party to the case. He explained that the Attorney General’s Office correctly argued that the Board was prohibited from being made a party because the 11th Amendment of the U.S. Constitution protects the state from being joined as a defendant in federal court. He said the federal judge then remanded the case back to state court where the judge ordered him to make the Board a party in the lawsuit. He stated that he wants the case to go to trial because he doesn’t believe the case can be settled and asked the Board to help his client by telling the judge that the case should go to trial. He said the Board would not be paying anything beyond what would ordinarily be paid through the processing of claims. He stated that if the Hartley Co. wins the case, then Jones & Frank will be required to pay for the cleanup work and the Board would be reimbursed for any claim payments made to the Hartley Co.

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 # 11924-0001/10/26/95, Owner – Herbert Adams

Ms. Richmond said that Herbert Adams is the responsible person for a program year 1995 release at 409 Church Street in Bradner, Ohio. She said this is his fifth request for hardship status and should be his last request because an NFA was issued for the release in June 2018. She said, to date, the Fund has reimbursed almost \$525,000 for corrective actions for this release.

Ms. Richmond said there are currently no claims pending review and the estimated corrective action costs for the next 12 months are \$12,000. She said Mr. Adams and his wife both retired in 2016 and currently their income is from social security, annuities totaling \$425,000, part-time auto repair work, and two properties which generate a small amount of rent annually.

Ms. Richmond explained that the financial information was reviewed using the U.S. EPA financial capacity test for retirees which looks only at their income from pensions compared to their annual living expenses. It does not include cash, social security benefits, investments, or other assets when making the evaluation. She said, based on the information provided on the application and the financial capacity test for retirees, Mr. Adams does not have adequate cash flow or the ability to carry additional debt in order to pay corrective action costs.

Ms. Richmond recommended the Board approve the application and grant hardship status to him. Vice-Chairman Hull so moved and Mr. Bryant seconded. A vote was taken and all members voted in the affirmative. The motion passed.

Claim # 14094-0001/09/07/11, Owner – The Gas Station Enterprise, LLC

Ms. Richmond said The Gas Station Enterprise, LLC is the responsible party for a 2011 release at 207 South High Street in Columbus Grove, Ohio. She said that, as a member of the LLC, Gregory Miller submitted the application requesting the Board grant hardship status to The Gas Station Enterprise, LLC. She noted this was the fifth request for hardship status.

Ms. Richmond stated that, to date, the Fund has reimbursed \$117,000 for corrective action costs for this release. She said there are no unsettled claims in house and the costs for corrective action work over the next 12 months are estimated to be \$92,000.

Ms. Richmond explained that Mr. Miller no longer owns the release site and the LLC no longer generates revenue, but he is continuing the corrective actions for the release. She said Mr. Miller is retired and his only sources of income are from social security benefits of about \$30,000, some investment income, and a few rental properties which generate a small amount of rent. In addition, he sold a property, and he is receiving installment payments from the sale. She said his reported income exceeds his expected annual household living expenses by approximately \$20,000.

Ms. Richmond said, based on the hardship application and the U.S. EPA financial capacity test for retirees, Mr. Miller can afford corrective action costs of \$50,400 based on his annual income less living expenses. She said given that the anticipated cost of corrective action work over the next year is \$92,000, she recommended the Board approve the application and grant hardship status to The Gas

Station Enterprise, LLC. Vice-Chairman Hull so moved and Mr. Bryant seconded. A vote was taken and all members voted in the affirmative. The motion passed.

Claim # 15303-0001/06/24/14, Owner – Rohr’s Auto Service

Ms. Richmond said that Robert Rohr is the responsible person for a 2014 release at 112 First Street in Massillon, Ohio. She said this is his fourth request for hardship status. She said to date, the Fund has reimbursed \$96,000 for corrective action costs for this release and there is one unsettled claim in house for about \$21,000. She said the corrective action costs for the next 12 months are estimated to be \$55,000.

Ms. Richmond stated that after taking operating losses for several years, Mr. Rohr closed the business in 2013 and sold a portion of the assets to pay outstanding bills. She said his only source of income is his social security benefits which total about \$20,000 annually. She noted that he is trying to sell the property, but has been unable to sell it without a determination of no further action by the State Fire Marshal.

Ms. Richmond said, based on the fact that the estimate of \$55,000 for corrective action costs for the next 12 months far exceeds his reported annual income, she recommended the Board approve the application and grant hardship status to Mr. Rohr. Vice-Chairman Hull so moved and Mr. Hills seconded. A vote was taken and all members voted in the affirmative. The motion passed.

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

Ms. Richmond said that Lois Jeffers and her deceased husband are the responsible persons for a release that was discovered in 1996 at 89 South Main Street in Fredericktown, Ohio. She said, although the site was sold in March of 2007, Ms. Jeffers has continued the corrective actions at the site.

Ms. Richmond said that, to date, the Fund has reimbursed \$328,000 for corrective actions for this release. She said, although there are no claims currently pending review, the cost of corrective action work expected to be conducted over the next 12 months is estimated to be \$31,000.

Ms. Richmond said Ms. Jeffers is retired and her only source of income is her social security benefits which are about \$22,000 annually. She said this is slightly higher than her reported household living expenses. She stated that Ms. Jeffers has limited assets, and based upon the fact that the estimate of \$31,000 for corrective action costs for the next 12 months exceeds her annual income, she recommended the Board approve the application and grant hardship status to Ms. Jeffers. Vice-Chairman Hull so moved and Mr. Bryant seconded. A vote was taken and all members voted in the affirmative. The motion passed.

Claim # 18344-0001/10/26/98, Owner – Red Stripe Associates, LLC

Ms. Richmond said Red Stripe Associates, LLC is the responsible party for a release that was discovered in 1998 at 50708 National Road in Saint Clairsville, Ohio. She said Gary Glessner submitted the application requesting the Board grant hardship status to the LLC. She noted this was Red Stripe Associates’ 17th request for hardship status.

Ms. Richmond stated that to date, the Fund has reimbursed \$243,000 for corrective action costs for this release and the corrective action work expected to be conducted over the next 12 months is estimated to be \$25,000.

Ms. Richmond said the property and business were sold in November 2008 and Red Stripe Associates provided financing to the new owner. She said Red Stripe Associates received the final payment in November 2013 and that payment was used to pay the mortgage on the property. She said that currently, Red Stripe Associates is not generating additional funds, and therefore, it is not in a position where it can acquire financing or self-finance ongoing corrective actions.

Ms. Richmond said that based on the U.S. EPA financial capacity test and information submitted with the application, there is less than a 55% probability that Red Stripe Associates can afford \$25,000 in corrective action costs in the next year and recommended the Board approve the application and grant hardship status to Red Stripe Associates, LLC. Vice-Chairman Hull so moved and Mayor Falconi seconded. A vote was taken and all members voted in the affirmative. The motion passed.

Claim # 19924-0001/05/06/14, Owner – P & W Properties, LLC d/b/a Route 22 Sunoco

Ms. Richmond said that P & W Properties, LLC is the responsible party for a release that was discovered in program year 2013 at 521 Lincoln Avenue in Lancaster, Ohio. She said as the owners of P & W Properties, LLC, Donald and Cindy Husband are requesting the Board grant hardship status to the LLC. She said this is the fourth and last request for hardship status for this release as an NFA was issued on July 18, 2018.

Ms. Richmond stated that to date, the Fund has reimbursed \$90,000 for corrective action costs for this release. She said there are no open claims in house and the corrective action costs for the next 12 months are estimated to be \$6,000.

Ms. Richmond said Mr. and Mrs. Husband are the only members of P & W Properties, and they own the property at 521 Lincoln Avenue. She said the station located on the property is operated by another LLC, which is called Route 22 Enterprises, LLC. She noted that Mr. and Mrs. Husband are also owners of Route 22 Enterprises. Ms. Richmond said, per a conversation with Mrs. Husband, Route 22 Enterprises is the entity that paid the remediation costs. She explained that an analysis using the EPA ABEL model was conducted on both P & W Properties and Route 22 Enterprises' financial data and the model estimates a 99% probability that P & W Properties can afford \$6,000 in corrective action costs, and an 86% probability that Route 22 Enterprises can afford \$6,000 in corrective action costs.

Ms. Richmond stated that a claim for which hardship has been granted is on average reviewed within 30 days, however, up to 90 days is a reasonable time period. She noted that claims without hardship status are currently being processed on average within 90 days of receipt. She said given P & W Properties' and Route 22 Enterprises' current liquid assets, net worth, and gross business income and the current claims processing time, both LLC's are in a financial position where they can afford the \$6,000 in corrective action costs to be incurred within the next 12 months. She then recommended the Board deny the application for hardship status. Vice-Chairman Hull moved to deny the application and Ms. Waggener seconded. A vote was taken and all members voted in the affirmative. The motion passed.

Certificates of Coverage – Ratifications:

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

Ms. Richmond said the lists behind Tabs 8, 9, and 10 are listings of facilities that had been issued or denied a program year 2016, 2017, or 2018 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 and if the tanks existed in previous years, a Certificate for the subject tanks has been issued to the owner in at least one of the prior two years, then a Certificate of Coverage is issued.

Ms. Richmond explained that, if deficiencies or compliance issues are 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 29 facilities included on the list behind Tab 8.

Vice-Chairman Hull 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 Certificate of Coverage for the one tank on the list behind the Tab 8 green divider page.

Vice-Chairman Hull moved to ratify the denial of the 2016 Certificate of Coverage that was 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 issuance of the 2017 program year Certificates of Coverage for the 53 owners of the 81 facilities included on the list behind Tab 9.

Vice-Chairman Hull moved to ratify the issuance of the 2017 Certificates of Coverage for the facilities listed. Mr. Hills 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 86 tanks located at the 29 facilities on the list behind the Tab 9 green divider page.

Vice-Chairman Hull moved to ratify the denial of the 2017 Certificates of Coverage that were 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 issuance of the 2018 program year Certificates of Coverage for the 2,395 owners of the 12,029 tanks included on the list behind Tab 10.

Vice-Chairman Hull moved to ratify the issuance of the 2018 Certificates of Coverage for the tanks 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 2018 program year Certificate of Coverage for the owner of the three tanks on the list behind the Tab 10 green divider page.

Vice-Chairman Hull moved to ratify the denial of the 2018 Certificate of Coverage that was listed. Mr. Bryant seconded. A vote was taken and all members were in favor. The motion passed.

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. Mayor Falconi so moved. Vice-Chairman Hull seconded. Chairman Rocco called for a roll call. The following members voted in the affirmative: Ms. Waggener and Messrs. Bergman, Bryant, Falconi, Hills, Hull, Pisula, Stephenson, and Rocco. There were no nays. The motion passed. Chairman Rocco stated that he would recuse himself from a portion of the executive session.

Reconvene Meeting

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

Chairman Rocco stated that, as discussed during the executive session, he needed a motion to authorize the Executive Director in consultation with the Chairman and Attorney General's Office to make any and all decisions regarding The Hartley Company vs. Jones & Frank litigation. He explained that the purpose of this request for authority is to allow litigation decisions to proceed in a timely manner. Vice-Chairman Hull so moved. Mr. Stephenson seconded. A vote was taken and all members were in favor. The motion passed.

Confirm Next Meeting and Adjourn:

Chairman Rocco said that the next Board meeting will be held on Wednesday, November 28, 2018, at 10:00 a.m. The Finance Committee will be meeting at 9:00 a.m. prior to the Board meeting to discuss annual per-tank fee and deductible amounts for the 2019 program year.

Mr. Hills made a motion to adjourn the meeting and Vice-Chairman Hull seconded. All members were in favor.