



Petroleum Underground Storage Tank Release Compensation Board

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MINUTES OF THE 185th MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD September 9, 2020 – 10:00 a.m.

BOARD MEMBERS IN ATTENDANCE

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

EX-OFFICIO MEMBERS IN ATTENDANCE

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

OTHERS IN ATTENDANCE

Starr Richmond	Executive Director, PUSTRCB
Madelin Esquivel	Assistant Director, PUSTRCB
Don Leasor	Chief Fiscal Officer, PUSTRCB
Rick Trippel	Claims Supervisor, PUSTRCB
Jonathan Maneval	Executive Assistant, PUSTRCB
Allyson Nemece	Office Assistant, PUSTRCB
Rachel Huston	Assistant Attorney General
Clair Linkhart	API Ohio
Doug Darrah	ATC Group Services LLC
Michael Baker	BJAAM Environmental, Inc.
Meagan Leaders	BJAAM Environmental, Inc.
Emily Mackenzie	Pinnacle Environmental Corp.
Matt Young	Cumberland Farms/EG Group
Jeremy Fultz	Evergreen Resources Group, LLC

Minutes submitted by:


Jonathan Maneval
Executive Assistant

Call to Order:

Chairman Rocco convened the one hundred eighty-fifth meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, September 9, 2020. Acting under the authority of Section 12 of Amended Substitute House Bill Number 197, effective March 27, 2020, the public meeting was conducted via a ZOOM audio/visual conference call.

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

Chairman Rocco announced that Robert Cantrell did not seek reappointment to the Board after his term expired. He stated that two seats on the Board are currently unfilled and the vacancies include a representative of retail petroleum dealers and a representative of businesses that own underground storage tanks (USTs). He invited Board members to recommend individuals to fill the vacant seats and noted that because of the current makeup of the Board, only individuals that are not affiliated with the Republican Party can be considered.

Minutes:

Chairman Rocco asked if there were any comments or questions regarding the minutes from the June 10, 2020 Board meeting and there were none. Mr. Ord moved to approve the minutes and Vice-Chairman Hull seconded. A vote was taken and all were in favor. 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. Mayor Falconi made a motion to re-elect Jim Rocco as the Chairman. Mr. Bryant seconded. Hearing no other nominations, a vote was taken and all were in favor. The motion passed. Mr. Rocco will remain as Chairman.

Mr. Bryant made a motion to re-elect John Hull as the Vice-Chairman. Mr. Ord seconded. Hearing no other nominations, a vote was taken and all were in favor. The motion passed. 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. The Chairman then appointed Mr. Stephenson and the designee from the State Treasurer's Office to serve on the Finance Committee. He appointed Messrs. Bergman, Falconi, and the Designee from the Department of Commerce to serve on the Rules Committee.

2021 Meeting Dates

Chairman Rocco set the following meeting dates: January 13, February 10 (tentative), March 10, June 9, September 8, and November 17, 2021. All meetings will begin at 10:00 a.m.

BUSTR Report:

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

Mr. Ord reported that BUSTR's corrective action staff have been able to continue their work by reviewing reports that were electronically submitted or scanned. He said the field inspection staff have been working with owners and contractors to obtain documentation needed to correct previously cited violations. He noted that the field inspection staff is performing operational compliance inspections using social distancing and personal protective equipment. He said that letters of support for communities seeking U.S. Environmental Protection Agency (U.S. EPA) Petroleum Brownfields program grant monies are being processed by the staff.

Mr. Ord reported that the staff had completed their annual ethics training and IT security training as well as a new diversity training. He said it is uncertain whether the certified installer and certified inspector training courses, which are typically held in February and March, will be provided due to the ongoing COVID-19 pandemic. He noted that certain fire fighter training is being conducted at the academy with strict protocols in place.

Mr. Ord reported that the "Click Scheduling" program is no longer being used to schedule operational compliance inspections of USTs. He said the DAS IT staff updated the Ohio Tank Tracking & Environmental Regulations (OTTER) database to be used for the scheduling of inspections.

Mr. Ord stated that a U.S. EPA Region 5 all states meeting was held virtually in August. He noted that Ohio served as the host for it with Steven Krichbaum and Scott Sigler leading the meeting.

Mr. Ord reported, for the week ending August 29, 2020, there were 56 new inspections performed for a total of 2,348 inspections for the three-year inspection cycle. He commented that this is about 400 inspections behind where they would typically be in the inspection cycle. He said that three NFAs (no further actions) were generated during the week ending August 29, 2020, and eight additional NFAs were issued the following week for a total of 350 NFAs issued this grant cycle. He said the target projection set by the U.S. EPA is 552. He mentioned that he anticipates the U.S. EPA will reduce this target number.

Mr. Ord stated that, as of August 29, 2020, there were about 21,000 registered USTs. He mentioned that the number of tanks is trending downward. He said there were 2,165 active releases and 1,567 active closures. He stated that about 31,000 petroleum releases had been granted no further action status since the beginning of the BUSTR program. Vice-Chairman Hull questioned whether fuel storage capacity is decreasing along with the reduction in tank population or if tanks are being replaced with larger capacity tanks. Mr. Ord said he knew of some new installations with 30,000-gallon tanks and commented that some three-tank systems are being replaced with two-tank systems, which use blenders.

Chairman Rocco said he reviewed a U.S. EPA report, which indicated Ohio's UST compliance rate is around 50%. Mr. Ord explained that the EPA formula for calculating the compliance rate has changed and he felt the number does not accurately reflect the percentage of tanks that are actually in

compliance with the requirements. He commented that a high number of tanks are reaching the end of their 30-year manufacturers' warranties and insurers are significantly increasing the premiums to cover the Fund deductible for them. He said he has directed owners to other financial responsibility mechanisms such as the guarantee with standby trust for owners that are finding it difficult to obtain insurance.

Financial Reports:

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

Audit Update

Mr. Leasor stated that the auditors would begin their in-house portion of the audit in early October. He explained that the audited financial statements are due to the Auditor of State by December 31, and the plan is to present the audited financial statements to the Board at the November meeting in order to meet the December 31 filing deadline.

Office Space Rent Adjustment

Mr. Leasor said that following the recommendation of a Board member at the previous meeting, he approached building management to determine if they might forego an increase to rent for operating costs because of the COVID-19 pandemic. He said they responded indicating that some savings for janitorial services, trash pickup, and utilities had been realized and they anticipate providing a rent credit in the March rental statement after the 2020 calendar year costs are reconciled.

Director's Orders Update

Mr. Leasor reported that the Director's Orders that are typically issued in August to owners whose annual fees remain unpaid were not mailed. He explained that instead, a notification was emailed to the owners reminding them that the fees were due and they were in non-compliance as a result of their non-payment of the fees. In addition, the Board's staff reached out to owners by phone and provided Certificate of Coverage applications to owners where necessary. He said, as a result of these efforts, only about 245 accounts remain unpaid for the 2020 program year. He said the Director's Orders, which will assess late payment fees, would be issued on September 15, 2020.

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 8, 2020, the unobligated account balance was \$22.1 million. He said this amount includes \$11.9 million in STAR Ohio and the custodial account, and the \$10.2 million invested in U.S. treasuries and U.S. agency callable bonds. He said the obligated account balance for the payment of claims is \$8.38 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 the fiscal year. Mr. Leasor said the claims expense for the month of July was \$4,019,000, which included the second of four payments to a major oil company in accordance with the release and

settlement agreement the Board authorized in November of 2019. He said \$4,629,000 had been paid for claims since July 1, 2020. He said this is 35.6% of the \$13 million obligated by the Board for the payment of claims for fiscal year 2021.

Mr. Leasor said the operating expenses for the month of July were about \$158,000. He pointed out that temporary service expenses were 12.9% of the amount budgeted and explained that a temporary employee was brought in house to fill in for a staff member who was out on leave. He commented that the staff member returned to work in July and no temporary employees are currently being used. He said there was no rent expenditure in the month of July. He commented that the August lease payment would typically be paid in July, but it was paid in the beginning of August. He said that legal and professional expenses were 9.6% of the amount budgeted. He explained that these expenses include fees for the Assistant Attorney General's services from the 4th quarter of the previous fiscal year that were paid in the month of July. He said telephone expenses were at 9.3% of the amount budgeted. He noted that this expense included internet access, VoIP service, a cell phone, renewal of the web address registration, and a staff messaging subscription. He said all other expenses are at or below where they should be at this time in the fiscal year.

Fee Statement Statistics

Mr. Leasor said as of August 31, 2020, the per-tank fees collected for the current 2020 program year were just above \$8 million, which represents 97% of the billed amount. He said that between July 1 and August 31, 2020, approximately \$74,000 was collected for prior years' fees, net of refunds.

Mr. Leasor said, for the 2020 program year, 15,412 tanks were billed at the standard deductible (\$55,000) per-tank fee and 5,317 tanks were billed at the reduced deductible (\$11,000) per-tank fee. Mr. Leasor said as of August 31, 2020, fees had been paid at the standard deductible rate for 14,307 tanks and at the reduced deductible rate for 5,349 tanks. He said fees for a total of 19,656 tanks had been paid by 2,971 owners. He said this compares to fees being paid for 19,689 tanks by 2,989 owners for the same period of time in the prior year.

Mr. Leasor said, for the program year ended June 30, 2020, fees had been paid for a total of 20,337 tanks by 3,093 owners.

Mr. Leasor said the \$8.1 million collected to date represents 96.9% of the \$8.4 million budgeted for the 2020 program year. He said so far, for program year 2020, 97.2% of the fees had been received for the 20,220 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 that as of August 31, 2020, refunds totaling \$1,500 had been paid to three owners for program year 2020 and noted the amount of pending refunds totals \$1,426,997. She said for program year 2020, no refund monies had been used to offset outstanding fees. She said as of August 31, 2020, the fees collected by the Attorney General's Office and Special Counsel less collection costs

totaled \$19,602. She said that no accounts had been certified to the Attorney General's Office for collection since July 1, 2020. She pointed out that in the previous year about \$1,085,000 had been certified for collection and this included about \$450,000 of program year 2018 fees that were unpaid.

Ms. Esquivel said there are eight Orders Pursuant to Law currently under appeal and information to support the objections is expected for five of these. She said information has been received and is under review for the three other appeals. She said that no Determinations to Deny a Certificate of Coverage were under appeal.

Ms. Esquivel stated that no Ability to Pay Applications are pending review. The Ability to Pay program allows former UST owners experiencing financial difficulty to apply for and receive a determination of their ability to pay delinquent fees.

Ms. Esquivel reported that 3,242 Applications for a Certificate of Coverage were mailed as part of the annual mailing, and as of September 1, 2020, a total of 1,729 Certificates of Coverage have been issued for program year 2020. She said there are 1,177 Applications for Certificates of Coverage currently being processed. She noted that no Pending Denials or Determinations to Deny a Certificate of Coverage had been issued for the 2020 program year.

Ms. Esquivel stated that there are 30 uncashed refund checks totaling \$29,208. She said there are nine owners with pending refunds totaling \$32,895 to whom letters have been sent notifying them that more information is needed before their refund may be issued. She said there are 34 owners with pending refunds totaling \$60,745 for which information had been requested through two notifications, but no responses have been received.

Mr. Ord stated that as part of their budget process, the Bureau estimated that the number of tanks is decreasing by about 3.5% each year. He asked if the reduction has been considered by the Board in terms of funding. Mr. Leasor responded explaining that each year he prepares five-year financial projections, which are built with an assumption that the number of tanks will decrease over time. He noted that there will be a Finance Committee meeting prior to the November meeting at which the committee will review the financial projections and present to the Board their recommendation regarding the annual per-tank fee and deductible amounts for the next program year.

Claims Reports:

Chairman Rocco called on Rick Trippel, Claims Supervisor, to present the claims reports.

Mr. Trippel reported as of September 1, 2020, the total maximum liability of in-house open claims is \$10.1 million. He said that using the claim payout ratio of 77.1%, which is the average ratio of the past five years, the actual anticipated claim liability of unpaid in-house claims is about \$7.8 million. He said the anticipated claim liability of unpaid in-house claims is about \$8.2 million using a payout ratio of 80.7%, which is the payout ratio for the program year 2019 that ended on June 30, 2020.

Mr. Trippel reported that, as of September 1, 2020, a total of 606 claims with a total face value above the deductible amount were pending review. He noted that the staff is currently finalizing claims that were received prior to April 2020.

Mr. Trippel stated that, as of September 1, 2020, a total of 28 claim settlement determinations were under appeal. He explained that these pertain to only seven release sites. He said that 16 appeals are for determinations for one release, six appeals are for another release, and two are for a third release. He said the remaining four appeals are for claim settlement determinations pertaining to separate releases. He noted that for 18 of the appealed determinations, the staff is waiting for information to support the appeals to be provided.

Mr. Trippel reported that, during program year 2019, a total of 521 claim applications were received and the staff settled or closed a combined total of 487 claims. He explained that in January 2020, the status of 1,093 claims was changed from open to settled or payment pending as a result of a settlement agreement with a major oil company. He said this status change for those claims significantly impacted the claims statistics for program year 2019. He pointed out that the report presents the program year 2019 statistics with the first line excluding the major oil claim settlements and the second line including them. He said, without factoring in the major oil settlement claims, the average per-claim payout was about \$13,425 and the average claim payout ratio was 80.7%. He noted the average percentage of disallowed costs was 17%. He said with the major oil settlement claims included in the statistics, the total number of claims settled or closed in program year 2019 was 1,580. He said the average payout per-claim payment was \$12,096 with an average claim payout ratio 61.6%, and the average percentage of disallowed costs was of 33.8%. He reported that, in the months of July and August, 105 claims were received and 89 claims were settled. He said the average per-claim payout was [\$11,069] with an average claim payout ratio of 78% and the average percentage of disallowed costs was of 19.2%.

Chairman Rocco asked if the settlement with the major oil would continue to affect statistics going into the future. Mr. Trippel said the major oil settlement only had a bearing on the program year 2019 statistics but noted the number of open in-house claims will remain low because of the settlement. The Chairman asked how the processing of claims was going with the staff working remotely and asked if anything could be done differently to speed things up. Mr. Trippel said that particularly in the month of March when the staff was initially sent home with little preparation and warning, the claims processing slowed down, but the staff has gotten better over time, and they are trying to catch up on the backlog. The Chairman commented that the quicker the claims can be processed the better off it will be for the tanks owners since their income has become tight. Mr. Trippel said he and the Director have discussed the situation and are cognizant that responsible parties are anxious to get reimbursed and the economic situation has amplified their concerns.

Mr. Trippel said that during program year 2019, a total of 114 eligibility applications were received and 77 eligibility determinations were issued. He said of these eligibility determinations, 51 were approved and 26 were denied. He said of the denials, 11 were due to no corrective actions being required, five were for no release being demonstrated, five were for abandoned or out of compliance USTs, four were late filed applications, and one was for no Certificate of Coverage.

Mr. Trippel said that in the months of July and August, 12 eligibility applications were received and that seven eligibility determinations were issued. He said currently, 104 applications are pending review and five determinations are under appeal. He noted that 12 applications lack reports documenting that an eligible release has occurred.

Mr. Trippel reported that during program year 2019, a total of 122 requests for cost pre-approval had been received and 116 cost pre-approval notifications had been issued. He said that during the months of July and August, 24 requests for cost pre-approval had been received and 22 cost pre-approval notifications had been issued. He said currently, 51 cost pre-approval requests are pending review, of which 42 are mandatory, four are voluntary, and five are notifications of cost exceedance.

New Business:

Hardship Application

Chairman Rocco called upon Don Leasor, Chief Fiscal Officer, to present the hardship application.

Mr. Leasor stated that the Board's rule 3737-1-08 provides for an owner experiencing financial hardship to apply for hardship status with the Fund. He said granting hardship status allows for the acceleration of the review of the claims submitted by the owner. He noted that granting hardship status does not increase the amount of reimbursement to the tank owner. He 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. He said, once granted, the hardship status remains in effect for a two-year period and, at that time, the owner may reapply for hardship status.

Mr. Leasor stated that, in determining hardship status, the application and a minimum of two years of income tax records are reviewed. He said, in addition, a 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 # 20645-0001/11/01/19, Owner – Laxmi Distributors, LLC

Mr. Leasor said Laxmi Distributors, LLC is the responsible party for a release that was discovered in November of 2019 at 205 South Main Street in Bluffton, Ohio. He said Praveen Vohra submitted the application requesting the Board grant hardship status to the LLC. He noted this was Laxmi Distributors' first request for hardship status.

Mr. Leasor stated that one claim in the amount of \$363,000 was received for the release and it is pending review. He said the corrective action costs for the next two years are estimated to be \$75,000 and it is anticipated that third-party claims will also be submitted for the release.

Mr. Leasor explained that Mr. Vohra has operated the facility since 2006 and he is paying \$51,000 annually towards the purchase of the property through a land contract, which is to be completed in 2026. Mr. Leasor said on his 2018 calendar year tax return, Mr. Vohra reported a total income of \$146,000, which was \$54,000 more than his household expenses. Mr. Leasor said the application indicated there were no gas sales and limited convenience store sales for a three-week period after the release was discovered. He said the U.S. EPA model estimates the LLC cannot afford the \$75,000 in corrective action costs and, therefore, the Director is recommending the Board approve the application and grant hardship status to Laxmi Distributors, LLC.

Chairman Rocco commented that the amount requested for reimbursement in the first claim submission seemed high considering the release was just recently discovered. Mr. Ord said he was somewhat familiar with the release and explained that a significant amount of gasoline was lost. He said the

station sits on top of fractured bedrock and when the fuel reached the bedrock, it travelled affecting many private wells in the area that were no longer in use but were never properly abandoned. He said this resulted in vapors in the residences. He stated that he knew a significant amount of money was spent on immediate corrective actions.

Chairman Rocco asked if there were any other questions and there were none. Vice-Chairman Hull moved to approve the hardship application and Mr. Ord seconded. A vote was taken and all members voted in the affirmative. The motion passed.

Certificates of Coverage – Ratifications:

Chairman Rocco called on Madelin Esquivel, Assistant Director, to present the lists of owners who have either been issued or denied a Certificate of Coverage for ratification by the Board.

Ms. Esquivel said the process used to review the fee applications and issue or deny a Certificate of Coverage includes a review for completeness to determine full payment was received; financial responsibility for the deductible has been demonstrated; and the owner has certified with his signature that he is in compliance with the State Fire Marshal's rules for the operation and maintenance of petroleum underground storage tanks. 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. She said if a Certificate has not been issued in one of the prior two years and the tanks existed during those years, the owner must comply with rule 3737-1-04.1 by demonstrating the tanks are in compliance with the Fire Marshal's rules for the operation and maintenance of USTs.

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

Ms. Esquivel requested the Board ratify the Director's actions with respect to the issuance of the 2019 program year Certificates of Coverage for the 213 facilities included on the program year 2019 Certificates issued list.

Vice-Chairman Hull moved to ratify the issuance of the 2019 Certificates of Coverage for the facilities listed. Mr. Ord seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Esquivel requested the Board ratify the Director's actions with respect to the denial of the 2019 program year Certificates of Coverage for the 111 tanks located at the 35 facilities included on the program year 2019 Certificates denied list.

Vice-Chairman Hull moved to ratify the denial of the 2019 Certificates of Coverage that were listed. Mr. Ord seconded. A vote was taken and all members were in favor. The motion passed.

Ms. Esquivel requested the Board ratify the Director's actions with respect to the issuance of the 2020 program year Certificates of Coverage for the 1,668 owners of the 2,494 facilities included on the program year 2020 Certificates issued list.

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

Ms. Esquivel stated that no determinations denying a 2020 program year Certificate of Coverage were issued since the June meeting.

Executive Session:

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

The Chairman then 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 and Vice-Chairman Hull seconded. The Chairman called for a roll call. The following members voted in the affirmative: Ms. Waggener and Messrs. Bergman, Bryant, Fleming, Falconi, Hull, Stephenson, Ord, Lenzo, and Rocco. There were no nays. The motion passed. Messrs. Fleming and Lenzo did not participate in the executive session.

Reconvene Meeting

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

Confirm Next Meeting and Adjourn:

Chairman Rocco stated that the next Board meeting will be held on Wednesday, November 18, 2020, at 10:00 a.m. He said the Finance Committee would be meeting at 9:00 a.m. prior to the Board meeting.

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

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