



Petroleum Underground Storage Tank Release Compensation Board

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MINUTES OF THE 190th MEETING OF THE PETROLEUM UNDERGROUND STORAGE TANK RELEASE COMPENSATION BOARD September 8, 2021 – 10:00 a.m.

BOARD MEMBERS IN ATTENDANCE

Jim Rocco
John Hull
Steve Bergman
Scott Fleming
Dan Ridi
Tom Stephenson

EX-OFFICIO MEMBERS IN ATTENDANCE

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

OTHERS IN ATTENDANCE

Starr Richmond	Executive Director, PUSTRCB
Madelin Esquivel	Assistant Director, PUSTRCB
Don Leasor	Chief Fiscal Officer, PUSTRCB
Hannah Brame	Claims Supervisor, PUSTRCB
Jonathan Maneval	Executive Assistant, PUSTRCB
C. Patrick Denier	Assistant Attorney General
Michael Baker	BJAAM Environmental, Inc.
Dan Adams	Atlas Technical Consultants

Minutes submitted by:


Jonathan Maneval
Executive Assistant

Call to Order:

Chairman Rocco convened the one hundred ninetieth meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, September 8, 2021.

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

The following members were not in attendance: Don Bryant and Larry Burks.

Chairman Rocco announced that Mayor Ron Falconi, the representative of local governments, had resigned from the Board and noted two members are awaiting reappointment by Governor DeWine.

Minutes:

Chairman Rocco asked if there were any comments or questions regarding the minutes from the June 9, 2021 Board meeting and there were none. Vice-Chairman Hull moved to approve the minutes and Mr. Bergman seconded. A vote was taken and Ms. Waggener and Messrs. Bergman, Fleming, Hull, Ridi, Stephenson, Krichbaum, Lenzo, and Rocco were in favor. Mr. Stephenson 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. Mr. Stephenson made a motion to re-elect Jim Rocco as Board Chair and John Hull as Vice-Chair. Mr. Bergman seconded. Hearing no other nominations, a vote was taken and all were in favor. The motion passed. Mr. Rocco will remain as Chair and Mr. Hull will remain as Vice-Chair.

Finance and Rules Committee Appointments

Chairman Rocco stated that the Chair and Vice Chair 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, Fleming, and the Designee from the Department of Commerce to serve on the Rules Committee.

2022 Meeting Dates

Chairman Rocco set the following meeting dates: January 12, February 9 (tentative), March 16, June 8, September 14, and November 30, 2022. All meetings will begin at 10:00 a.m.

BUSTR Report:

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

Mr. Krichbaum stated that BUSTR has a number of position openings including a corrective actions supervisor position, two underground storage tank (UST) inspector positions, and the position he held earlier in the year. He said they are working with the Department of Commerce to fill the vacancies but noted the process of posting and hiring has been delayed due to multiple bureaus trying to move hires through the system.

Mr. Krichbaum said the Bureau is planning to use \$50,000 of grant monies to perform 42 responsible party searches in the coming year. He explained that responsible party searches are used to identify the parties needing to perform cleanup work.

Mr. Krichbaum said BUSTR employees come into the office once a week and work other days in a teleworking environment. He said the staff is staying productive and the number of environmental reports being reviewed is good. He said inspectors are out in the field and the staff are keeping up with public records requests and things of that nature.

Mr. Krichbaum reported that the two-year UST grant, which funds the inspection side of the program, was recently approved by the federal Office of Underground Storage Tanks. He noted that the funding amount approved was similar to the previous grant. He said the LUST (Leaking Underground Storage Tank) grant funding used to fund the salaries of the environmental coordinators came through with no problems.

Mr. Krichbaum said BUSTR's staff is keeping up with required in-house training. He mentioned that BUSTR plans to offer training to customers and stakeholders but the timing of it is uncertain due to COVID-19. He said they intend to conduct UST installer and inspector courses and also offer a continuing education course for existing UST inspectors when the timing is right.

Mr. Krichbaum stated that an update to BUSTR's main core database known as OTTER (Ohio Tank Tracking & Environmental Regulations) is needed and they are awaiting support from the Department of Commerce IT section to look at it. He explained that much of BUSTR's processes go through the database and noted it handles registration records, compliance inspections, and environmental files.

Mr. Krichbaum stated that Ohio's tank population is around 21,000 with approximately 3,400 owners and a little over 7,000 facilities. He said there are over 2,100 active releases and around 1,700 active closures. He said a little over 31,500 no further actions (NFAs) have been issued through the life of the program.

Financial Reports:

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

Audit Update

Mr. Leasor stated that he anticipates the auditors to begin their in-house portion of the audit in early October. He said the audited financial statements are due to the Auditor of State by December 31, 2021, and ideally the audited financial statements will be presented at the Board's November meeting in order to meet the December 31 filing deadline.

May, June, and July Financials

Mr. Leasor said the May, June, and July financials were emailed to each member. He said he would be discussing the July 2021 financial report.

Mr. Leasor reported that, as of September 7, 2021, the unobligated account balance was \$18.1 million. He said this amount includes \$4.1 million in STAR Ohio and the custodial account, and \$14 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 \$7.1 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 \$4.16 million, which included the third of four payments to BP in accordance with the release and settlement agreement authorized by the Board in November of 2019. He said since July 1, 2021, a total of \$4.9 million had been paid for claims for fiscal year 2022. He noted this amount is 41% of the \$12 million obligated by the Board for the payment of claims for fiscal year 2022.

Mr. Leasor reported that operating expenses for the month of July were about \$155,700. He said expenses for office supplies was 11.8% of the amount budgeted. He noted this expenses includes the payment for offsite file storage from the fourth quarter of fiscal year 2021 and a two-year renewal for antivirus security software. He reported that the legal and professional expenses were 9.8% of the amount budgeted and noted that these expenses include fees for the Assistant Attorney General's services from the fourth quarter of fiscal year 2021. 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, 2021, the per-tank fees collected for the current program year 2021 were \$7.9 million, which represents 95% of the billed amount. He said that between July 1 and August 31, 2021, approximately \$64,000 was collected for prior years' fees, net of refunds of \$5,200.

Mr. Leasor said, for program year 2021, a total of 15,246 tanks were billed at the standard deductible (\$55,000) per-tank fee and 5,389 tanks were billed at the reduced deductible (\$11,000) per-tank fee. Mr. Leasor said as of August 31, 2021, fees had been paid at the standard deductible rate for 14,240 tanks and at the reduced deductible rate for 5,277 tanks. He said fees for a total of 19,517 tanks had been paid by 2,921 owners. He said this compares to fees being paid for 19,614 tanks by 2,971 owners for the same period of time in the prior year.

Mr. Leasor said, for the program year ended June 30, 2021, fees had been paid for a total of 20,278 tanks by 3,099 owners.

Mr. Leasor said the \$7.98 million collected to date represents 95.6% of the \$8.34 million budgeted for program year 2021. He said so far, for program year 2021, 96.8% of the fees had been received for the 20,160 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 explained that she would be reporting statistics shown in the program year 2021 column, which represents information from July 1 through August 31, 2021. She pointed out that information for the previous program year is shown in the column to the right. She reported that, as of August 31, 2021, refunds totaling \$5,210 had been paid to 11 owners for program year 2021 and noted the amount of pending refunds totals \$1,485,342. She said \$1,000 of pending refunds was used to offset outstanding fees. She said as of August 31, 2021, the fees collected by the Attorney General's Office and Special Counsel less collection costs totaled \$21,239. She reported that since July 1, 2021, outstanding fees for 120 accounts totaling \$417,050 had been certified to the Attorney General's Office for collection. She noted the fees certified consisted of program year 2020 fees that were unpaid as well as fees for other years that were identified as unpaid.

Ms. Esquivel reported that three Orders Pursuant to Law were under appeal and said information to support the objections is expected. She stated that one Determination to Deny a Certificate of Coverage is under appeal. She said that more information concerning the appeal had been received and is under review.

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

Ms. Esquivel reported that, as of September 1, 2021, Certificates of Coverage had been issued to 2,218 owners for program year 2021. She said there are 696 Applications for Certificates of Coverage currently being processed and six unresolved Pending Denials. She noted that no Determinations to Deny a Certificate of Coverage had been issued for program year 2021.

Ms. Esquivel stated that there are 37 uncashed refund checks totaling \$32,738. She said there are 14 owners with pending refunds totaling \$62,606 to whom letters have been sent notifying them that more information is needed before their refund may be issued. She said there are 36 owners with pending refunds totaling \$61,345 for which information had been requested through two notifications, but no responses have been received. She noted that the files are closed out if there is no response to the second request and they are not counted in the amount of pending refunds.

Ms. Esquivel pointed out for program year 2020, the refunds paid and refunds used to offset outstanding fees totaled \$193,841. Chairman Rocco asked why only 14 refunds were paid in 2021 versus the 234 paid in 2020. Ms. Esquivel explained that program year 2021 began July 1, 2021, and the number reflects refunds paid in the two months of July and August.

Claims Reports:

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

Ms. Brame reported, as of September 1, 2021, the total maximum liability of in-house open claims is approximately \$10.1 million. She said using the claim payout ratio of 78%, which is the average ratio of the past five years, the anticipated payout of unpaid in-house claims is about \$7.9 million.

Ms. Brame reported, as of September 1, 2021, a total of 524 claims with a total face value above the deductible amount were pending review. She reported that the staff is currently reviewing claims received prior to July 2021. She stated that 29 claim settlement determinations were under appeal, as of September 1, 2021. She explained that these appeals pertain to only eight release sites, as multiple appeals pertain to three of the eight sites. She said of the 29 settlement determinations under appeal, the staff is waiting for information to support the appeals for 18 of the appealed determinations and additional information provided is under review for five appeals. She said for the remaining six appeals, a settlement agreement has been reached and the parties are working through the language in that agreement. She commented that since the previous meeting, four claim settlement appeals were closed and one new claim settlement appeal was received.

Ms. Brame stated that, as of September 1, 2021, a total of 73 claims were received and a total of 100 claims were settled thus far this program year. She said the average payout per claim application this program year is \$11,572 and the average claim payout is 84.5% of the net claim value (face value – deductible). She noted that on average 12.8% of the claim face value was disallowed.

Ms. Brame reported so far for program year 2021, a total of 11 eligibility applications were received and 28 eligibility determinations were issued. She said of these eligibility determinations, 19 were approved and nine were denied. She said the reasons for denial included four for late filing of the applications, three for no valid Certificate of Coverage, one for out-of-compliance USTs, and one for no corrective actions being required by BUSTR. She said as of September 1, 2021, a total of 98 eligibility applications were open. She noted that 14 applications were unreviewable until the necessary reports are received and more information has been requested for four applications. She noted that, as of September 1, 2021, 14 eligibility determinations were under appeal. She said additional information is expected for 11 appeals and information for two appeals has been received and is under review. She said the remaining eligibility application under appeal will be resolved as part of the settlement with the associated claims. She noted that since September 1, 2021, four additional eligibility determinations were issued and more information was requested for one eligibility application.

Ms. Brame reported, as of September 1, 2021, a total of 18 cost pre-approval requests were received. She said the cost pre-approval requests included three requests for new remedial action plans; eight requests for annual costs for remedial action plans or free product recovery; one request for an interim response action requiring BUSTR approval; three requests for either Tier 3, monitoring or calibration plans; one cost exceedance notification; and two voluntary requests for cost pre-approval. She said as of September 1, 2021, a total of 15 cost pre-approval notifications had been issued and 34 cost pre-approval requests were pending review. She commented that five additional cost pre-approval notifications were issued since September 1, 2021.

New Business:

Personnel Compensation

Chairman Rocco stated that a statewide pay raise was given to employees in June 2021 and explained that the Board must approve the increase for the Board's Executive Director, Starr Richmond. He then requested a motion to approve a 3% salary increase for Starr Richmond, effective June 20, 2021. Vice-Chairman Hull so moved and Mr. Stephenson seconded. Chairman Rocco commented that Director Richmond has done a phenomenal job for the Board and it would not be what it is without her. A vote was taken to approve the salary increase and all members were in favor. The motion passed.

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. Environmental Protection Agency 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 # 16065-0001/03/25/96, Owner – Lois Jeffers

Mr. Leasor 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. He said, although the site was sold in March of 2007, Mrs. Jeffers has continued the corrective actions at the site. He noted it is her tenth request for hardship status.

Mr. Leasor said that, to date, the Fund has reimbursed over \$536,000 for corrective actions for this release. He said, there are no claim applications currently pending review and the cost of corrective action work expected to be conducted over the next 24 months is estimated at \$70,000.

Mr. Leasor said Mrs. Jeffers is retired and her only source of income is her social security benefits of approximately \$23,000 annually and her reported household living expenses are just over \$23,000. He said her only asset is an individual retirement account worth \$6,000. He said that based upon the estimate of \$70,000 for corrective action costs for the next 24 months exceeding her annual income, the Director is recommending the Board approve the application and grant hardship status to Mrs. Jeffers. Vice-Chairman Hull so moved and Mr. Fleming 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 program year 2020 Certificates of Coverage for the 87 owners of the 878 facilities included on the program year 2020 Certificates issued list.

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

Ms. Esquivel requested the Board ratify the Director's actions with respect to the denial of the program year 2020 Certificates of Coverage for the 271 tanks located at the 96 facilities included on the program year 2020 Certificates denied list.

Vice-Chairman Hull moved to ratify the denial of the 2020 Certificates of Coverage that were listed. Mr. Bergman 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 program year 2021 Certificates of Coverage for the 2,219 owners of the 3,421 facilities included on the program year 2021 Certificates issued list.

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

Ms. Esquivel stated that no determinations denying a program year 2021 Certificate of Coverage had been issued since the June meeting.

Confirm Next Meeting and Adjourn:

Chairman Rocco stated that the next Board meeting will be held on Wednesday, November 17, 2021, at 10:00 a.m. He said the Finance Committee would be meeting at 9:00 a.m. prior to the Board meeting.

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