

**MINUTES OF THE 123<sup>rd</sup> MEETING OF THE  
PETROLEUM UNDERGROUND STORAGE TANK  
RELEASE COMPENSATION BOARD  
September 10, 2008**

**BOARD MEMBERS IN ATTENDANCE**

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

**EX-OFFICIO MEMBERS IN ATTENDANCE**

George Horvath, representing the Ohio Department of Commerce  
Chris Geyer, representing the Ohio Environmental Protection Agency  
Chris Glaros, representing the Ohio Treasurer of State

**OTHERS IN ATTENDANCE**

Starr Richmond	Executive Director, PUSTRCB
David Reeder	Assistant Director, PUSTRCB
Don Leasor	Chief Fiscal Officer, PUSTRCB
Ellen Mitton	Administrative Coordinator, PUSTRCB
Donna Kestler	Claims Administrative Assistant, PUSTRCB
Cindy Duann	Environmental Claims Supervisor, PUSTRCB
Nicole Johnson	Assurability Coordinator, PUSTRCB
Rita Arnold	Office Assistant, PUSTRCB
Verne Ord	Assistant Bureau Chief, BUSTR
Cheryl Hawkinson	Assistant Attorney General
Jennifer Rhoads	OPMCA
Andy Shrock	Parsons
Doug Darrah	ATC Associates
B. J. Reed	Speedway SuperAmerica
Tim Wilfong	Speedway SuperAmerica
Adam Campbell	Speedway SuperAmerica
Mike Sawkiewicz	Environmental Compliance Services, Inc.

Minutes submitted by:

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Ellen S. Mitton, Administrative Coordinator

### **Call To Order:**

Chairman Rocco convened the one hundred twenty-third meeting of the Petroleum Underground Storage Tank Release Compensation Board on Wednesday, September 10, 2008, at 10:10 a.m. The following members were in attendance: Jim Rocco; John Hull; Brian Epperson; Steve Hightower; Tom Stephenson; Mayor Don Kuchta; Cheryl Hilvert; Tom Kmiec; Duane Cable; George Horvath, representing Director Kimberly Zurz, Ohio Department of Commerce; Chris Geyer, representing Director Chris Korleski, Ohio Environmental Protection Agency; and, Chris Glaros, representing Treasurer of State Richard Cordray.

Prior to the beginning of the meeting, Chairman Rocco announced that Mr. Stephen L. Hightower, President of Hightowers Petroleum Company in Middletown, Ohio, had been appointed by Governor Strickland to replace Ms. Nancy Kister, whose term expired. Following the introduction of Mr. Hightower, he gave a brief summary of his credentials. Chairman Rocco noted that both John Hull and Mayor Don Kuchta had been reappointed to serve on the Board for another three-year term.

Chairman Rocco introduced Mr. George Horvath, Bureau Chief of the Bureau of UST Regulations, representing Ohio Commerce Director Kimberly Zurz. Mr. Horvath assumed the duties of Bureau Chief the first part of September. Mr. Horvath gave a summary of his credentials.

Chairman Rocco recognized Ms. Donna Kestler, who recently joined the PUSTRCB staff as the Claims Administrative Assistant. Ms. Kestler gave a brief overview of her credentials.

Chairman Rocco asked if there were any comments, questions, or discussions regarding the minutes from the June 11, 2008, board meeting and there were none. Mr. Hull moved to approve the minutes. Mr. Geyer seconded the motion. A vote was taken and all members were in favor. The motion carried.

### ***Election of Officers and Committee Member Appointments***

Chairman Rocco entertained motions from the floor for nominations for officers for the upcoming year. Mayor Kuchta nominated Mr. Jim Rocco to continue in his role as Chairman and Mr. Hull seconded. Hearing no other nominations, Mayor Kuchta made a motion to close the nominations and to elect Jim Rocco as the Chairman. Mr. Hull seconded. A vote was taken and all members were in favor. Mr. Rocco will remain as the Chairman.

Mr. Kmiec nominated Mr. John Hull to remain as the Vice Chairman. Mayor Kuchta seconded. Hearing no other nominations, Mr. Kmiec moved to close the nominations and to elect John Hull as Vice Chairman. Mayor Kuchta seconded. A vote was taken and eleven members were in favor. Mr. Hull abstained. The motion passed. Mr. Hull will remain as Vice Chairman.

### ***Rules Committee***

Chairman Rocco asked for Board members to volunteer to participate on the Rules Committee for the next year. Tom Stephenson, Cheryl Hilvert, and Brian Epperson volunteered to remain as the members of the Rules Committee. Chairman Rocco and Vice Chairman Hull will also work on the committee in an ad hoc capacity.

### ***Finance Committee***

Chairman Rocco noted that the Finance Committee generally consists of the Chairman, the Vice Chairman and another Board member. Mr. Hightower volunteered to replace Ms. Kister. The Finance Committee members are Chairman Rocco, Vice Chairman Hull, and Steve Hightower.

### ***2008 Meeting Dates***

Chairman Rocco set the following 2009 meeting dates: January 14, February 11 (tentative), March 11, June 10, September 9, and November 18. All meetings begin at 10:00 a.m.

### **BUSTR Report:**

Chairman Rocco called upon Mr. George Horvath, Bureau Chief, BUSTR, to present the BUSTR report.

Mr. Horvath stated that additional funds from the U.S. Environmental Protection Agency (USEPA) for compliance inspections had been granted last fiscal year, and with those funds, BUSTR hired four new inspectors for Mahoning, Lucas, Hamilton, and Franklin counties in March. Mr. Horvath stated that with the four new hires added to the current staff of six, BUSTR inspectors have completed 28% of the required inspections and are on track to complete 3,100 operational compliance inspections this coming year. He stated that that momentum would put BUSTR on target to meet the Federal Energy mandate to conduct on site inspections of each UST in Ohio every three years.

Mr. Horvath stated that in addition to those four new hires, BUSTR had hired two retired individuals, referred to as "Senior Environmental Employment" ("SEE") employees. The "SEE" employees are actually employed by the USEPA through the National Asian Pacific Center on Aging. Mr. Horvath stated their salaries will be funded through the USEPA. He said that BUSTR has gained approval from USEPA, Region 5, for the inspections conducted by these individuals to count toward the mandatory three year operational compliance inspection cycle.

Mr. Horvath said that during the week of July 28 through August 1, 2008, selected Division of State Fire Marshal staff, Department of Commerce personnel, and other BUSTR stakeholders participated in a process improvement exercise called a Kaizen Event. He said this event concentrated on the corrective action work flow process for the purpose of identifying and eliminating waste and bringing added value to the corrective action review process. Mr. Horvath said that the new process involves team building with leadership within each team, along with streamlining the review process of environmental investigation reports, to reduce the review times and increase review volume with current staffing levels.

Mr. Horvath stated that the Domenici-Barton Energy Policy Act of 2005 is Federal legislation signed into law on August 8, 2005. This Act amended federal laws governing the underground storage tank program and has placed notable additional requirements on the state of Ohio.

He said that the BUSTR Rule Revision Advisory Committee ("committee"), consisting of UST owners and/or operators and other interested parties in Ohio, will not be meeting again until the Ohio rule revisions needed to comply with recent changes in the federal law are closer to completion. Mr. Horvath stated that the Department of Commerce legislative representatives are in the final stages of revisions needed for the proposed statute changes regarding delivery prohibition if a tank were found to be noncompliant. Mr. Horvath added that BUSTR has been in close communication with US EPA, Region 5, with regard to delays occurring on implementing the Energy Bill provisions due to staffing issues. Region 5 has indicated that Ohio is still well within an appropriate time frame.

Mr. Horvath said that there are currently 3,978 active tank owners representing 8,004 registered facilities and a total of 23,232 registered tanks. He said that BUSTR had a total of 3,157 active releases and a total of 1,133 active closures.

## **Financial Report:**

Chairman Rocco called upon Mr. Don Leasor, Chief Fiscal Officer, to present the Financial Report.

Mr. Leasor stated that the auditors would be in-house November 3 through November 14 to begin work on the 2008 Audit. He said the audit report is expected to be presented to the Board at the first meeting in January 2009.

He said that the 2010-2011 biennial budget is being prepared to be submitted to the Ohio Office of Budget and Management the week of September 15. Mr. Leasor said this budget relates only to the personnel expenses of the Board.

Mr. Leasor stated that the May, June, and July financials were mailed to each member. He asked if there were any questions or concerns to be discussed. Hearing none, he began his report with the July income figures.

Mr. Leasor said that the miscellaneous income expense line item is just over \$2,000 due to the reimbursement of costs for a conference the staff attended in the previous fiscal year. He said that claims expense is just over \$607,000.

Mr. Leasor stated that the salary line is on target and noted that Governor Strickland approved a merit increase for members of the staff effective and inclusive of July first. Mr. Leasor noted that the salary increases had been budgeted for this year in anticipation of the Governor's approval.

Mr. Leasor said that the temporary services line item is a little over \$2500. Temporary personnel from a staffing agency is being utilized to fill a position that was vacated in June. The printing and copying line item is at 23% of the budgeted amount and noted this line item is cyclical and high now due to the fee statement printing.

Mr. Leasor stated that all other line items are either slightly below budget or right on target for the period of time in the fiscal year.

Mr. Leasor said that the first series of bonds fully matured as of August 15, 2008 and the second series is due to mature in August 2013. He said that the current unobligated balance is just under \$11.3 million. Mr. Leasor said that there is an additional \$8.4 million remaining in the obligated account that is set aside for fiscal year 2009 claim settlement payments, and another \$6.9 million in the debt service account.

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

Mr. Leasor referenced the Fee Statement Statistics sheet and said that to date there have been approximately \$13.7 million in tank fees collected, representing almost 94.6% of the \$14.7 million budgeted for the 2008 Program Year. He said that this amount represents 21,121 tanks paid by 3,335 owners and noted that the Board is a little behind in collections as compared to this time last year. Mr. Leasor stated there was also \$194,960, net of refunds, collected in prior year fees to date.

Mr. Leasor stated that 74% of the tanks were paid at the standard deductible and 26% were paid at the reduced deductible and these figures fall in line with the Board's historical collection averages.

A discussion followed regarding the high percentage of prior year fees being collected since the rule change regarding property transfer fees became effective June 30, 2006. It was noted that recently there has been an increase in property transfers due to bankruptcies, sheriff's auctions, etc., and there is a need for future tank

owners and those not currently part of the Board's constituency to readily obtain information which would explain to a prospective buyer the requirements of owning and/or removing USTs. It was stated that realtor, banking associations, sheriff's associations, and other organizations involved in the selling and buying of sites should be informed of the requirements of owning USTs. Ms. Richmond and Ms. Hawkinson are to look into a possible venue to inform potential purchasers of sites with petroleum underground storage tanks about the Fund, BUSTR, and other requirements of owning tanks.

### **Claims Report:**

Chairman Rocco called on Ms. Cindy Duann, Environmental Claims Supervisor, to present the claims report. Ms. Duann said that currently the total maximum liability of in-house open claims is approximately \$29 million, which is slightly higher than in previous months. She said using the historical claim payout at approximately 65%, the actual anticipated claim liability of unpaid claims is about \$18 million. She said that the average site cleanup cost per NFA site is \$121,348 and the average claim payout per site is about \$65,946. Ms. Duann said that in comparison, there were 121 NFA'd sites cleaned up exclusively under BUSTR's 1999 and/or 2005 rules of which only 64 sites or about 53% have reached their deductible.

Ms. Duann said there are currently 43 claims under appeal, noting that number is higher than normal. She stated that many of these appeals have had settlement addendums sent and several appeals are awaiting more information from the tank owners.

Ms. Duann said that in Program Year 2007 a total of 916 claim packages were received with a total net value of \$13.2 million. She said that the claims staff settled 738 claims and closed 65 claims with a net value of \$11.7 million. Ms. Duann said that the settlement offer amount was \$7.2 million. She said that the overall claim payout rate was 61.5%. Ms. Duann noted that there were no lump sum settlements in Program Year 2007.

Ms. Duann said that in the last four years, the top two reasons for costs being disallowed were late filing and negotiated settlements, averaging 21.6% and 20.7% per year, respectively, and together they average 43% of the total disallowed costs. She said that the disallowed costs for lack of cost pre-approval have gradually increased, however not significantly. Currently when cost pre-approval is not sought as required, only 50% of the eligible costs may be reimbursed. Ms. Duann said that the disallowed costs for ineligible releases had significantly increased in PY 2007 noting that when releases get older, there are likely to be multiple subsequent releases that are not eligible.

A discussion followed about how to effectively get information regarding eligibility, claim filing deadlines, and the preapproval process to owners/operators who have a suspected release as soon as possible after BUSTR issues a new release number. One option discussed was the possibility of "piggy backing" on BUSTR mailings to tank owners/operators who are mailed a suspected release packet. A second option was to periodically receive a list of the new release numbers BUSTR assigns and the Board's staff could mail information to the listed owners. Chairman Rocco discussed tailoring this information to the specific incident by providing the owner with a list of the deadline dates for filing eligibility and claim reimbursement applications. Ms. Richmond said that she would discuss these options in greater detail with Mr. Horvath in the upcoming weeks.

Ms. Duann said that in the first two months of program year 2008, the Board received 127 claim settlement packages. She said that the staff settled 103 claims and closed 19 claims with a net value of just over \$1 million. Ms. Duann said the claims settlements were lower than usual; however, she noted that the staff had been focused on cost pre-approvals during the first part of the program year.

Ms. Duann said the Board received 108 eligibility applications in program year 2007, 71 eligibility applications were approved and 29 eligibility applications were denied. Ms. Duann said that the eligibility approval rate is 71%, and pointed out that 27.8% of eligibility applications were denied for late filing between program year 2003 and 2007, which is still considered to be high.

Ms. Duann stated that during the first two months of program year 2008, the Board received 18 eligibility applications and determined 21, which included seven applications that were denied eligibility.

Ms. Duann said that the Board had received 31 cost pre-approval applications and determined a total of 51 in July and August of this program year. Ms. Duann stated that requests for pre-approval are being reviewed within thirty to forty-five days.

### **New Business**

#### *Hardship Application*

##### Claim #13811-0001/06/18/97-E – Anna Bodmer, dba Bodie’s Kwik Stop

Ms. Richmond said that the release site is 13352 US Route 52 in West Portsmouth, Ohio. She said that this is Ms. Bodmer’s first application for hardship. Ms. Richmond stated that to date, the Fund has received claims with a face value of approximately \$73,000 and Ms. Bodmer had been reimbursed \$52,528.78. She said that a claim package was received by the Fund in June totaling \$8,540.13.

Ms. Richmond stated that in addition to the review of the hardship application, a US Environmental Protection Agency (EPA) financial capacity test was used to determine Ms. Bodmer’s ability to carry debt. She said that the test determined that with her limited income from her business and a small pension, she does not have the ability to carry the debt. Ms. Richmond recommended that the Board approve this application and grant hardship status. Mayor Kuchta moved to approve the hardship application. Mr. Stephenson seconded and all were in favor. The motion passed.

#### *Power of Attorney*

Chairman Rocco called upon Ms. Cheryl Hawkinson, Assistant Attorney General, to explain the necessity of a Limited Power of Attorney for Signature Delegation. Ms. Hawkinson said that the form was created due to the increase in the number of transfers of sites with ongoing corrective action. This form would allow the previous owner and responsible person to delegate the new owner to discuss, sign, execute, and deliver documents, reports, forms, etc., requested by the Fund. She said however, the Power of Attorney does not allow the new owner, who is not the responsible person, to appeal a determination.

#### *House Bill 562*

Mayor Kuchta requested that someone research the intent of House Bill 562, which effects the reimbursement of Medicare, Part B. He stated that the way he understands the bill, it will affect his benefits. Ms. Hawkinson will look into this matter and contact the Mayor.

#### *Travel Reimbursement*

Also discussed was the amount of mileage reimbursement allowed for Board members. Ms. Richmond stated that there is some confusion regarding the mileage reimbursement rate for travel. It is unknown whether Ohio’s reimbursement rate automatically adjusts as a result of a change in the IRS mileage reimbursement rate.

Ms. Richmond indicated she believes the Ohio mileage reimbursement rate amount is 50.5 cents per mile even though the IRS travel reimbursement rate is currently 58.5 cents per mile. Ms. Richmond stated she would obtain an answer and get back with the Board members.

***Certificate of Coverage Ratification***

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

Ms. Richmond explained that behind Tab 7 there are two lists of owners. The first is a listing of owners who had been issued a program year 2007 Certificate of Coverage; and, behind the blue divider page, a listing of owners who had been denied a program year 2007 Certificate of Coverage. She said that behind Tab 8 there is a list of owners who had been issued a program year 2008 Certificate of Coverage. She stated that no owners had been denied a program year 2008 COC since the last meeting.

Ms. Richmond said that the process used to review the fee applications and issue or deny a Certificate of Coverage included a review for completeness to determine that full payment had been made, that financial responsibility was demonstrated, and that the BUSTR registration was complete. In a second level of review, BUSTR registration data is considered to determine whether tanks for which coverage is sought are in compliance with BUSTR rules. Ms. Richmond said if there are no issues, the facility receives a Certificate of Coverage.

Ms. Richmond explained that if compliance issues are discovered, notice is provided to owners in accordance with Board rules and the Revised Code. Throughout this process the Board's staff works with owners to correct the fee statement record and/or the BUSTR registration record. She stated that the staff often continues to work with owners even after a determination to deny a Certificate of Coverage has been issued. The Board's rules and the Revised Code make provisions for an appeal of the determinations issued within this process.

Ms. Richmond asked that the Board ratify her actions with respect to the 326 facilities receiving 2007 Certificates of Coverage.

Mr. Hightower moved to ratify the list of 2007 Certificates of Coverage that were granted. Mr. Hull seconded. A vote was taken and all were in favor. The motion passed.

Ms. Richmond stated that all of the processes as stated in the Board's rules and the Revised Code were followed in making the determinations for denying Certificates of Coverage. Ms. Richmond asked that the Board ratify her actions with respect to the 148 facilities that were denied a Certificate of Coverage for program year 2007.

Mr. Hightower moved to ratify the list of 2007 Certificates of Coverage that were denied. Mr. Geyer seconded. A vote was taken and all were in favor. The motion passed.

Ms. Richmond asked that the Board ratify her actions with respect to the 2,420 facilities receiving 2008 Certificates of Coverage.

Mayor Kuchta moved to ratify the list of 2008 Certificates of Coverage that were granted. Ms. Hilvert seconded. A vote was taken and all were in favor. The motion passed.

### **Executive Sessions**

Chairman Rocco requested a motion to go into executive session pursuant to R.C. 121.22(G)(3) to discuss matters of pending or imminent court action.

Mayor Kuchta so moved. Mr. Epperson seconded and a roll call vote followed. The following members voted in the affirmative: Messrs. Rocco, Hull, Cable, Epperson, Hightower, Horvath, Kmiec, Kuchta, Stephenson, Geyer, Glaros, and Ms. Hilvert. There were no nays and the motion passed.

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

Chairman Rocco requested a motion to go into executive session pursuant to R.C. 121.22(G)(1), to discuss personnel compensation related issues. Mr. Stephenson so moved. Mr. Hull seconded and a roll call vote followed. The following members voted in the affirmative: Messrs. Rocco, Hull, Cable, Epperson, Hightower, Horvath, Kmiec, Kuchta, Stephenson, Geyer, Glaros, and Ms. Hilvert. There were no nays and the motion passed.

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

Mr. Hull made a motion to increase the salary of the Executive Director, Starr Richmond, with a performance increase of five percent effective on her anniversary date in November 2008. Mr. Stephenson seconded. A vote was taken and all were in favor. There were no nays and the motion carried.

### **Confirm Next Meeting**

Mr. Kmiec made a motion to adjourn the meeting. Mr. Horvath seconded. All were in favor. The next board meeting will be Wednesday, November 12, 2008 beginning at 10:00 a.m.