

PENNSYLVANIA UNDERGROUND STORAGE TANK

INDEMNIFICATION BOARD

* * * * *

THIRD QUARTER 2023 BOARD MEETING

* * * * *

BEFORE: J. STEPHEN HIEBER, CHAIR
RICHARD BURGAN, Executive Director
TROY CONRAD, Member
WILLIAM BUCKFELDER, Member
LAURA SLAYMAKER, Member
AMY FORBES-WITT, Member
PRESTON BUCKMAN, Board Counsel

Reporter: Matthew Ford

Any reproduction of this transcript
is prohibited without authorization
by the certifying agency

HEARING: Thursday, September 21, 2023

10:04 a.m.

LOCATION: Capitol Associates Building

901 North Seventh Street

First Floor Conference Center-Forster Room

Harrisburg, PA 17101

E X H I B I T S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

<u>Number</u>	<u>Description</u>	<u>Page Offered</u>
---------------	--------------------	---------------------

NONE OFFERED

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CHAIR: Good morning. At this time I would like to call the September 21, 2023 Underground Storage Tank Indemnification Board meeting to order.

New business, do we have any, Rick?

MR. BURGAN: No, we do not, Steve.

CHAIR: Okay.

Let's move right into the administrative items.

Claims summary, Amy, please.

MS. FORBES-WITT: Okay.

Good morning, everyone. I am going to report on the claims summary data and payment information for the calendar year to date.

As of August 31st, 2023, we've had 110 new claims received, and three reopenings this year. Claims closed that were eligible for payments are 117, and 2 were closed without a payment. There were 15 denied claims thus far, and 18 claims that were withdrawn.

152 claims have been closed so far this year. The total pending claim count has decreased to 794, and last year at this time the claims count was at 862.

1 So I'd like to give kudos to the team
2 members, Teresa and Craig, for working diligently on
3 the increased workload this year with so many surprise
4 retirements.

5 And the dollars paid thus far relating
6 to claims payments equals \$19,884,996.15. The cost
7 per closed claim points to \$247,088.46 on average.

8 Regarding the TIIP Program, there was
9 one new TIIP received. No claims were closed, and we
10 have four open TIIP claims. The reserves are set at
11 \$1,450,000, and we have not made any TIIP payments so
12 far this year.

13 That concludes the claims updated
14 information.

15 I do have a couple more odds and ends
16 to report. If you recall, Sheetz lowered their gas
17 prices to a patriotic 1776 (sic) per gallon on
18 Independence Day this year. Per an analysis done by
19 the USTIF Fee Billing Department, Sheetz sold an
20 additional 1.5 million gallons of fuel above their
21 normal sales volume, which equates to an additional
22 gallon fee total of \$60,500.

23 Lastly, we received the EPA's State
24 Fund Soundness Survey on Friday, September 1st, and it
25 is due on Friday, October 13th. I am in the process

1 of completing the survey. And it's essentially a
2 report card to the EPA which, year after year, proves
3 that USTIF is one of the leading programs in the
4 country based on their feedback, which will be in the
5 spring of 2024.

6 So I will pass this on to Rick to
7 review the financial statements, unless anyone has any
8 questions or comments on this section.

9 CHAIR: Do we have any questions?

10 Okay. Hearing none, Amy, thank you
11 very much. That's all good news.

12 Let's move on to financial statements.
13 Rick?

14 MR. BURGAN: Hi. Good morning, folks.

15 I'm going to cover the financial
16 statements for the fiscal year ending June 30th. This
17 is one of the better reports, because this gives us an
18 entire year snapshot, as the Commonwealth runs on the
19 fiscal year. So this would cover July 1st of 2022
20 through June 30th of 2023.

21 If you would turn to page four on the
22 financial statement, I will start there. You will
23 note that in 2023, the total revenues for the program
24 were \$77,211,195. I take a closer look at the fee
25 revenue from year to year. Fees alone last year down

1 tank capacity, the TIIP amounted to \$54,605,621. I
2 did a prior year comparison, and that number, again,
3 in 2022, was \$54,994,025. So we were down maybe
4 \$300,000, \$400,000. So basically holding the line
5 there.

6 You will see last year, under the
7 revenues, we booked \$5 million - basically \$5.4
8 million. The big swing is due to our investment
9 return. See last year we took a hit of 60 million,
10 but this year we were actually up quite a bit. So
11 that's the big difference between the 2022 and the
12 2023 number.

13 As far as expenditures,
14 administrative costs for our other program, as well as
15 third-party administrator ICF; those are about \$5.6
16 million. Claims indemnification came in at
17 \$28,947,572. We exceeded last year at this time.
18 Those two numbers are basically holding the line as
19 well.

20 Funds released to DEP, \$9,618,484.

21 During the fiscal year, we had
22 expenditures totaling \$44,165,438. The good news is
23 we had revenues exceeding expenditures, \$33,045,757.

24 Moving to the last line on that page.
25 As of June 30th, 2023, the fund has a balance of

1 \$404,194,691. You'll see last year at this time we
2 were at about \$371,000,000, so we are above that
3 amount by \$33,128,149.

4 Basically, in my opinion, all good
5 numbers.

6 Moving to page 11, which shows the
7 actuarial estimation for future claims and our fund
8 balance. You will see that we have funds available
9 above our estimated future claims, \$106,705,102. See
10 last year we were basically at 51.4, so we've
11 essentially doubled that number.

12 Once again, my opinion, all good.

13 With that said, does anyone have any
14 questions regarding the financials at all?

15 Okay. Great. Thank you.

16 CHAIR: Thank you, Rick.

17 Okay. Moving on, let's go to the
18 Pollution Prevention Grant Program, Troy?

19 MR. CONRAD: Good morning.

20 For the fiscal year ending
21 June 30th, 2023, the Department has approved two
22 grants for \$9,750, and the Department has no
23 additional applications pending at this time.

24 For this current fiscal year, no
25 grants have been approved, no applications are

1 pending. Since the program's inception of
2 January 30th, 1998, 1,156 grants have been approved,
3 totaling over \$5.9 million.

4 Steve, would you like me to move into
5 Environmental Cleanup Program Statistics?

6 CHAIR: Please.

7 MR. CONRAD: For the fiscal year
8 ending June 30th, 2023, DEP expects to expend about
9 \$2,079,203 of the 3.4 million the Board approved for
10 the Environmental Cleanup Program. As part of the
11 expenditures, 107 heating oil reimbursements were
12 approved, totaling \$436,476. The Department currently
13 has two applications which are pending.

14 For the current fiscal year, the
15 Department is currently working on 15 saline sites,
16 has expended approximately 75,000 of the 4.5 million
17 allocation provided by the Board. To date, we have
18 two heating oil reimbursements that have been
19 approved, totaling \$7,750, and we have two
20 applications which are pending.

21 Do I have any - any questions?

22 CHAIR: Hearing none, we will move on
23 to old business.

24 Preston, if you would.

25 ATTORNEY BUCKMAN: Yes, sir, Mr.

1 Steve.

2 Good morning. This is the time and
3 place to update the Fund's efforts to promulgate some
4 amendments to the USTIF Regulatory Eligibility
5 Criteria.

6 A draft to those amendments was
7 circulated yesterday, and the focus of the amendments
8 is - excuse me - on Subsections 2 and 3 of Section
9 977.31. And in both of those subsections the
10 amendments are the result of decisions that have been
11 handed down by the courts. One of them is from the
12 Commonwealth Court, and the other two are from the
13 Pennsylvania Supreme Court.

14 So taking a peek at Subsection 2,
15 what is trying to be accomplished here is
16 memorializing or codifying two decisions, one from the
17 Commonwealth Court, called M.H. Davis, and one from
18 the Pennsylvania Supreme Court called the Youngs case.

19
20 The M.H. Davis case was from 2001,
21 and the conclusion of the Court in that case was that
22 the Claimant must have paid the fees under Section 705
23 of the Act at the time of the release, giving rise to
24 the claim is discovered. The Claimant had argued that
25 they had paid fees, and all of their fees were current

1 when they submitted their claim. But USTIF, after
2 reviewing the information, denied the claim, and said
3 that at the time that the release occurred, your
4 claims weren't current, and so, therefore, we're going
5 to deny this.

6 So the case essentially revolved
7 around, what does current fee mean? And the
8 Commonwealth Court, as I said, ultimately agreed with
9 the Fund and concluded that your section 705 fees have
10 to be paid when - when the claim giving rise to the -
11 or when the release giving rise to the claim is
12 discovered.

13 The other case that memorialized or
14 codified Subsection 2 is the Youngs case. And that
15 was a Pennsylvania Supreme Court case from 2013. And
16 the issue in that case was at a site where there are
17 multiple underground storage tanks - in the Youngs
18 case, there were four - do all of the fees for all of
19 the tanks have to have been paid at the time the
20 release giving rise to the claim was discovered?

21 Youngs - in the Youngs case, it was
22 never definitively conclusively determined which fees
23 were paid and which fees weren't paid. And that was
24 because of sort of a tortured property owner history,
25 and the fact that there were multiple tanks involved.

1 But what was conclusively determined
2 was that not all of the fees due on all four of the
3 tanks had been paid when the release giving rise to
4 the claim was discovered. And so USTIF denied the
5 claim on that basis. And ultimately the Supreme Court
6 agreed.

7 And so the examination of whether all
8 the relevant fees are paid - timely paid at a site
9 with multiple tanks is to be applied on a site basis,
10 and not on a tank-by-tank basis. So - so the language
11 that's amending Subsection 2, as I said before, is
12 attempting to capture the Court's conclusions in those
13 two cases

14 With respect to Subsection 3, again,
15 that's the result of a Decision. It is the second
16 Pennsylvania Supreme Court Decision. It was called
17 the Shrom's case, and that one was very recent. That
18 was this past April.

19 And the issue in that case was
20 - it was similar to the M.H. Davis case, except for
21 instead of in M.H. Davis, the issue being, do you have
22 your Section 70 fees current and paid at the time the
23 release is discovered that gives rise to the claim, in
24 Shrom, it was, do you have your Section 503
25 registration current and your fees paid at the time

1 the claim giving rise - the release giving rise to the
2 claim is discovered?

3 Ultimately the - the Supreme Court
4 found that when it comes to registration and
5 registration fees, they do not have to be current at
6 the time the release giving rise to the claim is
7 discovered. They only need to be current prior to the
8 time USTIF makes its eligibility determination.

9 Interestingly, in that case, the
10 Supreme Court told the Fund and the Board that if you
11 wish to impose a temporal limitation on the timing of
12 registration and payment of registration fees, you
13 need to do so by promulgating the regulation. So that
14 is what the Fund and the Board is attempting to do in
15 Subsection 3.

16 The rest of the amendments are, I
17 would say, nonsubstantive. They're basically just for
18 purposes of trying to be consistent and be as clear
19 and precise as possible in this section of the USTIF
20 regs.

21 So with that I will pause and
22 entertain any questions or comments from the Board.

23 CHAIR: Any comments.

24 MR. PERRY: It's Greg Perry,
25 Pennsylvania Farm Bureau. I just had to say, this is

1 the smallest promulgated change to a regulation that I
2 have probably ever seen. And I just have to empathize
3 with how much trouble you guys had to go through for
4 such a small but significant accomplishment.

5 ATTORNEY BUCKMAN: Well, thank you.

6 It is quite a process to have to go
7 through to amend regs. These are, as you note,
8 relatively minor in the grand scheme of things, but
9 the process is what it is, so to speak. So we will
10 march forward.

11 Do we have any other questions or
12 comments?

13 Hearing none, originally our
14 intention this morning was to take a formal vote of
15 the Board regarding approval of these proposed
16 amendments, but after I sent out the draft yesterday,
17 there was some interchange between the Insurance
18 Department and the Department of Environmental
19 Protection, and the result of that interchange was
20 that DEP is going to take some time to vet these
21 proposed amendments within their agency, which is a
22 very reasonable request.

23 And so instead of taking the formal
24 vote today, we're going to defer that until December,
25 see what input, if any, DEP has after they have a

1 chance to talk amongst themselves. Obviously,
2 particularly with Subsection 3, it touches upon the
3 DEP regulations, because the registration requirements
4 emanate from DEP regulations, so it impacts their
5 operation. And they should certainly have the time
6 they need to take a look at these and talk about it.

7 So this morning, we - as a result, we
8 just wanted to have this discussion, get these
9 thoughts, comments. And then obviously we'll keep the
10 Board posted, and then hopefully be in a position to
11 take a formal vote at the December meeting.

12 CHAIR: Do we have any other
13 questions?

14 MR. BURGAN: None here, Steve.

15 CHAIR: Hearing none, I'll turn it
16 back to you, Rick.

17 MR. BURGAN: Okay.

18 Thank you, Steve.

19 I just have a couple of - I have two
20 USTIF staffing updates. You will recall that at the
21 March meeting, I had announced that Sandy Frye, who
22 has been a long-tenured staffer with the program, was
23 retiring in April, and she did so. I spoke to her
24 last week. She's doing well.

25 Since that time, it has been somewhat

1 of an arduous process, but we have filled that
2 position, and we have a new USTIF claims evaluator
3 coming on board on Monday. His name is Steven Travis.
4 He currently works for Gallagher Bassett, who is a
5 third - large third-party claims administrator.

6 Just an aside, Amy Steiner, who we
7 all know and love, came out of Gallagher Bassett many
8 years ago. This gentleman is coming out of Gallagher
9 Bassett. He's got three-and-a-half years of claims
10 experience over there. Prior to that he was in UPS,
11 where he was actually a supervisor for several years.

12 No environmental background, but
13 neither did I, to be all honest with you. Amy and I
14 will be onboarding him on Monday, and he will be off
15 and running.

16 I will say that during that time,
17 Kraig Wilson and Teresa Isabella to my right here,
18 have been carrying the load. And they have done a
19 yeoman's job. Yeah, many, many thanks to them, as
20 well as Amy. It is tough to run a garage shop when
21 you're down an important critical piece, but - so they
22 have soldiered on.

23 We all made it. It was a team
24 effort. Help is on the way, guys. So many thanks to
25 you folks as well as Amy for guiding the ship through

1 this entire process.

2 Second announcement is a personal
3 one. It is with very mixed feelings that I announce
4 to the Board that I'm retiring from the Commonwealth.
5 My last day will be next Friday, actually,
6 September 29th. So this is my last Board meeting. As
7 a note, this is my 40th Board meeting that I have been
8 at, for a fun fact.

9 It's really been my pleasure and my
10 honor to serve the USTIF Program and to serve the
11 Board.

12 Steve Hieber and I had a chat
13 yesterday. You guys are all professionals, and I do
14 appreciate that. I hear nightmare stories out there
15 about other Directors who have to deal with Board
16 tensions and Board conflicts, and I've had none. I
17 came in, in June 2011 as Claims Manager. I filled
18 Steve Harmon's shoes on April 1st, 2015 - thank you,
19 Stephanie.

20 But you know, it's been a privilege
21 to lead the program. As Amy referred, we have one of
22 the top programs in the country, and we should all be
23 proud of that fact. I do not take credit for that. I
24 defer that to my folks once again sitting to my right.

25 Amy, you know, former Claims Manager, Amy Steiner,

1 Sandy Frye, all those folks, Greg, Teresa.

2 And especially ICF. Kevin Burke, the account
3 manager for ICF, is sitting over here to my right.
4 You know, these guys are top-notch,
5 top professionals. Obviously their work makes me look
6 good, and it makes the program look good. So this is
7 truly a team effort, and it has been a pleasure to
8 serve you folks.

9 Off of that, Laura Slaymaker has been
10 doing some wheeling and dealing over the past six
11 weeks since I announced I'd made a decision to
12 promptly retire. So she pulled some strings, people
13 have worked together. We do have a replacement for my
14 position. That gentleman is also in the room, and I
15 will point to my right. It's Mr. Ben Laura.

16 If you'll wave or stand.

17 For those of you that are not
18 familiar with Ben, Ben's been with the Commonwealth
19 - I just found this out a couple days ago - 17 years.
20 Ben is actually an attorney, which will serve well in
21 this position.

22 For the last three years, Ben has
23 served as in-house Counsel for USTIF. So he has been
24 ghost writing my appeal letters. He did ride shotgun
25 on the Strom case with outside Counsel. He attends

1 weekly meetings that Amy has with her staff every week
2 for the past three years. He provides legal opinions,
3 oversees outside Counsel.

4 So he is not a fish out of water to
5 the program. He's been a confidant the last three
6 years. We had to onboard him during COVID, which was
7 - which was somewhat difficult, but - yeah. I have
8 the utmost confidence in Ben.

9 I go out the door on the 29th. Ben
10 is actually attached to ODC. So they have to release
11 him to us, and they've done us a favor by releasing
12 him on October 14th. So really, my seat will only be
13 vacant for a couple weeks, and the operation will run
14 itself for those few weeks, along with the guidance of
15 Laura and Amy and the existing claims staff.

16 So I welcome Ben to the fold. I will
17 be meeting with him hopefully extensive over the next
18 week to review some things, you know, hot and heavy
19 items from the USTIF Program, as well as my other two
20 funds. He's going to inherit those as well.

21 So he's going to have a full plate
22 for the next couple months, but I believe the ship I
23 leave behind is in relatively good shape. I say the
24 staff is top-notch, the ICF is extremely professional,
25 so I wish you well, Ben, and good luck.

1 I will be quiet now, because I tend
2 to ramble. I will just move into the next meeting
3 date, Steve. The next one is scheduled for
4 December 14th. On tap will be a vote on this - moving
5 forward with the proposed amendments to the
6 regulations. There will also be the presentation by
7 AON, that's the annual actuarial analysis review, and
8 we will have the vote, you know, whether to keep fees
9 the same or change them for the upcoming calendar
10 year.

11 You know, December meetings are
12 always an important one. Attendance is appreciated at
13 those meetings, as well as we do need a quorum.

14 With that said, I wish you folks
15 farewell, and have a good one.

16 CHAIR: Rick, we can't thank you
17 enough for the job you've done for the Fund. I truly
18 mean that. It's been a stellar performance. We're
19 not only in the black, but you've brought us into the
20 digital age. You should take great pride in the job
21 you've done. And we truly thank you.

22 MR. BURGAN: I do, Steve.

23 Thank you very much.

24 CHAIR: At this time I'll take a
25 motion for adjournment.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. BURGAN: I make that motion.

CHAIR: All those in favor.

AYES RESPOND

CHAIR: Thank you very much, folks.

And Rick, you'll be sorely missed.

* * * * *

HEARING CONCLUDED AT 10:36 A.M.

* * * * *

CERTIFICATE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I hereby certify that the foregoing proceedings, hearing held before Chair Hieber, was reported by me on September 21, 2023 and that I, Matthew Ford, read this transcript, and that I attest that this transcript is a true and accurate record of the proceeding.

Dated the 11 day of October, 2023



Matthew Ford, Court Reporter