PENNSYLVANIA UNDERGROUND STORAGE TANK

INDEMNIFICATION BOARD

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IN RE: FOURTH QUARTER 2023 BOARD MEETING

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BEFORE: J. STEPHEN HIEBER, Chair

MEMBERS: Ben Lorah, Stephanie Wissman, Charles Kullman, Troy Conrad, Amy Forbes-Witt, Andy Greiner, Greg Perry, Nila Manning, Michael Howells, Ted Harris, Andrew McMenamin, Chris Hartman

HEARING: Thursday, December 14, 2023
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901 North Seventh Street
Harrisburg, PA 17102

Reporter: Sophia Mahoney

A P P E A R A N C E S

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I N D E X

P R O C E E D I N G S

ATTORNEY LORAH: Well, good morning. This is the fourth quarter meeting. Before we get started, I'll just introduce myself. My name is Ben Lorah. I'm the Executive Director of the Underground Storage Tank Indemnification Fund. I took over Rick's old position in October of this year. So this is my first go-round with this meeting. So we'll see how it goes.

So before we get started, this is - as you can see, here is a link to the agenda and the Board packet that was shared earlier. There's also a link in the chat, if you'd like to access it. And we'll start with a roll call.

So first off is Stephanie Wissman online? How about Jonathan Lutz? Moving on. Kevin Forsyth. Okay. One second. We'll make sure that -. Okay, so no one's muted.

Okay. Guattan Patel? Andy Greiner.

MR. GREINER: Here.

ATTORNEY LORAH: Okay, so we do have sound. Nila Manning?

MS. MANNING: I'm here. Thank you.

ATTORNEY LORAH: Good morning.

Ted Harris?

MR. HARRIS: Good morning.

ATTORNEY LORAH: Richard Negrin? Troy?

MR. CONRAD: I'm here.

ATTORNEY LORAH: Greg Perry? I see you on the video call. Steve Hieber.

CHAIR: I'm here.

ATTORNEY LORAH: Good morning, Steve. William Buckfelder?

Michael Howells?

MR. HOWELLS: Here. Good morning.

ATTORNEY LORAH: Good morning. Andrew McMenamin.

MR. MCMENAMIN: Here.

ATTORNEY LORAH: And Chris Hartman.

MR. HARTMAN: I'm here.

ATTORNEY LORAH: Good morning.

So we have a quorum. So we are ready to begin. So Mr. Hieber, take it away.

CHAIR: At this time I'd like to call the fourth quarter, December 14, 2023 Underground Storage Tank Indemnification Board meeting to order.

That said, Ben, would you like to start?

ATTORNEY LORAH: Sure.

So the first thing on the agenda is just reviewing the Board terms. We have two coming up for renewal this year, Alex Beluga and Greg Perry. So that will be happening later this year. So I'll reach out to you, see if you wish to continue, and then help you through the process of reappointment.

And another reminder, at the March meeting we will be having the Chair and Vice Chair elections for the Board. So that's something coming up.

And that's all I have for the term information.

So I believe we're headed to the actuarial report next. So I'll stop sharing my screen and Chaz will share this.

MR. KULLMAN: Okay, great. Thank you.

So I'll try to multitask and split this line as I go. So I'd just like to go over the results of our review and discuss the main assumptions, observations.

For the agenda, we'll start with the actuarial study, look at the trends in the claims data. Then we'll move on to the position at June 30, 2023, both the loss and ALAE estimates and what that means for the balance sheet at June 30, 2023.

Next we'll look at the pro-forma estimates and financial statements, with a focus on adequacy of rates or fees. And then we'll finish up by looking at the Tank Installers Indemnification Program, specifically the future underwriting income.

So we'll start with the actuarial study. The main part of the actuarial study is estimating the loss and expense reserves. We didn't change any of our actuarial models that we use. We still use multiple models. They're applied separately to loss and expense. And as in prior years, we have more information for loss versus expense.

On the loss side, we have paid loss plus case reserve values. On the expense side, we just have paid expense. And as you'd expect, the loss component is the main driver of the reserves. It accounts for approximately 90 percent.

As part of our review, we updated the model assumptions based on the June 30, 2023 data and the updated exposure information. And our main findings are that the favorable loss experience has continued that we've seen in prior years due to the active management of the claims and costs. The next slide outlines these and the other historical changes.

There's really nothing new here. And if you look on the executive summary, page 12 - pages 12 and 13, you can find additional details. The most recent change, which we've talked about the last couple of meetings, is the 2018 regulation changes, which require more inspections and testing, and that change has impacted the frequency.

Proceed. The next slide summarizes the frequency by year. Column four shows the total number of filed claims by calendar year. You can see it's been lower since 2017, up through 2018. And then after the 2018 regulation changes, it shot up over 200 claims per year in 2019 and '20. And then since then, it's moderated, with notably low frequency in 2021, at 172, and the first six months of 2023, where we saw 80 claims.

It's also helpful to look at the annual claim counts between reviews. This next slide shows the number of claims reported between each period from 7/1 to 6/30.

Since the prior review, you can see at the bottom there we had 173 new claims, and that would be compared to our prior projection of 196. So there were fewer claims than expected.

going forward for '23, '24, we're projecting 185 claims, and that's approximately the four-year average. So we're kind of coming off that spike in 2021.

The next slide shows a graph of the frequency. The solid red line shows the claim counts by year. The solid blue line shows the frequency rate, which is the number of claims per tank, and the dotted lines are our frequency projections. You can see from this the general frequency patterns look the same for the raw counts versus the counts per tank. In other words, the trends aren't driven by the exposures.

And if you look at the blue frequency rate curve, you can see that our projection, the dotted blue line, for 2024, lies above 2018 and prior, but below those spike years '19 and '20.

Okay. So frequency has improved since last year. The other data trends that we were seeing the last few years have continued. For instance, claims continued to be closed more quickly, and you can see that through the steadily declining number of open cases.

As of June 30, 2023, there are 805

cases. That's approximately a 7.6 percent drop from the prior year. And looking back, the five years prior to the most recent change, we were getting drops of like two and a half to five percent. So it was a bigger drop than usual in the number of open claims.

In addition to the claim closures, claim cost activity has also been favorable. We look at two things with this. The first is we track the closure average cost. Those kind of have to be taken with a grain of salt, because there's a big lag between the file date and the close date, approximately five to eight years. But those average costs have been improving and have continued the last 12 months.

For instance, this is the third year in a row that the average cost per claim has been below $200,000.

The second thing we look at is our prior model predictions versus the actual experience. And comparing the reported loss to our prior projections, we saw 10 million less reported in the last 12 months. And on a paid basis we saw 8 million less paid loss as well. So both better than expected.

On the expense side, we saw approximately 2 million less paid expense than we had predicted.

So what's the impact on the estimates from that favorable loss experience? This next slide shows the change in the ultimate loss in ALAE estimates at June 30, 2023 versus the prior year. If you look down at the bottom of the difference column, you can see that we reduced the total ultimate loss estimates by approximately 38 million for the periods June 2022 and prior.

As a reference, last year we had decreased them 30 million. So it's a bigger decrease than we had last year. And you can see, looking at the percentage difference column, that most of those decreases occur in the more recent, more immature years. Looking back to 2011 and prior and any of those individual years, the most they changed was approximately 800,000.

Okay. So the next slide graphs the ultimate loss in expense per exposure unit, which is registered tank. So the red line at the bottom is the 2023 estimate, And as a reference we have the prior two years. So you can see that curve has been moving down, steadily decreasing. And if you look at the space between the curves, it's notable that the biggest decrease was for 2019 and 2020, those two high frequency years.

As those years have continued to mature, we're seeing that the higher frequency, as we - I think we expected with the regulation changes, isn't necessarily translating into a proportional increase in cost.

So next we compare the ultimate loss estimate to revenue. The last column shows the ultimate loss and expense relative to revenue. You can see that since 2005 the ratios have been below a hundred. That's loss over revenue.

Prior to 2005, the rates were inadequate, but since 2005 the program has been adequately funded. So when you add in other costs and investment income, it covers - the revenue is enough to cover all that.

Looking at the bottom of that last column, the total to date revenue, expense to revenue, it's the first time it dropped below a hundred percent. So we've made up a lot of ground over the years. Last year it was 104 percent.

So where are we at 6/30/2023, as far as the balance sheet, I won't say too much on this because I think Ben's going to cover that later, the details of some of the other changes, but the main change for us is the surplus at the bottom is 142,000,000. That was 77 million a year ago and we projected it to be approximately 94 million.

And really the difference in the projected versus actual, the majority of it is the decrease in the loss estimates that were made in response to the favorable loss experience. And I think you'll remember we had a bad investment income year leading up to 6/30/22. Fortunately, investment income was much better the last 12 months.

So that's 6/30/23.

What about the pro-forma estimates, where we focus on the accuracy of rates?

For this, we start with the underwriting assumptions for the upcoming year, which is lost ALAE and revenue. We continue to reflect the favorable loss experience. So both frequency and severity decreased compared to our projections from last year.

We already talked about the 5.4 percent decrease in projected frequency. On the severity side, we decreased the average cost per claim projected for the upcoming year by just over 6 percent. And then combining those two reductions, it amounts to an approximately 11 percent reduction in the projected loss and expense for '23-'24.

Revenue during the last 12 months was approximately 3 percent lower than we had expected. So we lowered our projected revenue a bit, 2 percent. And as a reference, the prior 12 months - the last 12 months compared to the prior 12 months saw a reduction in revenue of approximately 1.1 percent.

So we've been expecting gas consumption to go down and drive that number down a bit. At 1 percent - we're thinking more it's going to be like one-and-a-half percent now, as what we've seen the last 12 months.

So that's the '23-'24 underwriting assumptions. We apply trends to these to project future loss, expense and revenue. The trends, the only changes we made, the throughput revenue trend is now negative one-and-a-half percent, which I just mentioned. It was negative one percent last year. The trend in average ALAE per claim, we lowered that from 3 percent to 2 percent, just based on the trends we're seeing in the data. That seems to be trending just like the loss we previously had at a higher rate.

So these trends are applied to our assumptions for '23-'24 to get future projections, which we can see. In this graph we're looking at the ultimate loss in ALAE per tank. And the dotted lines show the projected rate for this year versus the projections from our prior year. The red dotted line is this year's projection.

You can see it dropped approximately 11 percent, which I just mentioned on the prior slide. And because we lowered the expense trend, it's at a slightly less angle. It's trending at 2 percent per year instead of 2.1.

So we can also look at the projections relative to revenue. So this is just like the slide we saw earlier, but we extended out ten years. This is loss in ALAE per dollar of revenue. The ten-year projection shows that the losses and expenses are adequately funded through the ten-year projection period here, focusing on underwriting income. We have positive underwriting income under these projections through the year '29-'30, which is seven years. Last year's projections we added out positive underwriting income out through '27-'28.

And I guess the only other comment here is kind of putting all those trend rates together, the last column here is trending at approximately 3.4 percent. That's up from 3 percent last year and that's mainly driven by the reduction in revenue we're expecting. That's negative one-and-a-half percent versus negative one.

So this is the lost ALAE and revenue. The other pro-forma costs and assumptions are on this next slide.

Nothing changed materially here, other than we lowered the return on cash and invested assets from 5 percent to four and a half, just based on treasury yield rates we're seeing, as well as the historical return the users have seen on their portfolio. So really nothing changed here other than that.

And again, we're doing all this because we want to assess the adequacy of the funds. So the forward requirement is to set fees to have a positive cash and invested assets balance for at least five years. And similar to last year, that is met.

This next slide shows the ten-year projections. And page nine of the executive summary shows it broken out by year, if you want to see that. But the goal here is to look at the cash and invested assets.

As a reference, at June 30, 2023, the cash and invested assets are 417,000,000. So you can see, looking at the third column from the right here, that only grows over the ten year -.

And another reference value is the I mentioned earlier the surplus at June 30, 2023 is 142,000,000. You can see that grows as well, looking at the second to last column.

So cash and invested assets remain nonnegative during the whole period. In fact, that holds if you extend it out to 20 years as well. And all the interest rates we're looking at, which is a range of four to five. So clearly that meets the Board requirements of at least five years.

The other criteria we typically look at is a more stringent approach to assume no decrease in surplus during the next ten years. And you can see above that second to last column that we had noted, there is no decrease in surplus as is.

So the answer to, do we need to raise rates to keep that surplus from decreasing over the ten-year period is no, no rate change is needed. And similarly that would hold if we wanted to meet that criteria for 20 years out and the interest rates.

Okay. So that's the USTIF results.

Next is TIIP. Here we see the data at June 30, 2023 just loss compared to the prior year. The real data changes here are you can see 2013, '14 row. There was a case open at 125,000 of loss reserve. That case was dismissed. That's that change in column four at the top there.

We got three new claims in the last 12 months. All of those are at the preliminary reserve values of 125. And then there was an open claim in '21-'22 period. That's still open. It was reserved at $500,000 of loss. That went up to 1.75 million and it's still open.

So this is a really low claim volume kind of exposure and there's uncertainty how the open claims are going to turn out. But given the recent activity, we thought it was appropriate, for the purpose of projecting underwriting income, to increase the loss component estimates. So we ended up raising it. It was 95,000 last year for the upcoming year, just loss. We raised that to 205. That 205 is a longer term average. I think it might be like a ten-year loss rate kind of number, based on the data that's there.

But anyway, we made that increase.

What's not included there is expense. So if we add in expense, we get the following TIIP projections. Revenue, we're projecting 325. That's 10,000 less than we had thought last year. And then you can see, based on those loss projections, we expect underwriting income for each of the next eight years out of ten. And then it dips a little below zero.

But the main conclusion is, cumulatively, the underwriting income is sufficient during the next ten years.

And I think we're in similar situation here now as we were with the USTIF results. Like, as far as underwriting income, it looks good for about eight years before you get negative. That's not even including what we're seeing from investment income.

That's my presentation. If there are any questions, I'd be happy to answer them.

CHAIR: Do we have any questions?

Well, not hearing any, I would accept a motion to accept the actuarial report.

MR. GREINER: This is Andy Greiner. I'd like to make a motion that we accept the actuarial report as submitted.

CHAIR: Do I have a second?

MS. WISSMAN: This is Stephanie

Wissman, I second the motion.

CHAIR: Thank you, Stephanie. With that being said, we'll take a vote.

All those in favor?

AYES RESPOND

CHAIR: Do we have any opposed? Not hearing any, I would say the motion carries. The actuarial report will be accepted. Thank you, Chaz.

MR. KULLMAN: Thank you.

CHAIR: Moving on, we need to discuss the funding request from DEP.

Troy, are you up, ready?

ATTORNEY LORAH: Oh, Mr. Hieber. The next item on the agenda is voting on whether or not to continue with the use of fees at their current level.

CHAIR: Okay. I'm sorry.

Do we have a motion to accept the fees at the current level?

MS. WISSMAN: So moved.

MR. GREINER: This is Andy Greiner. I second that.

CHAIR: Thank you, Andy.

Any further questions regarding the fees?

And at this point, we'll take a vote. All those in favor, please say aye.

AYES RESPOND

CHAIR: Any opposed?

Very good. The motion carries. The fees will be accepted as they are.

Okay, moving on. Troy Conrad, are you ready with your report?

MR. CONRAD: Yes. We're pulling the presentation up quickly on Ben's laptop. He's going to hand that off to me, and then I'll get started.

All right. Can everyone hear me okay?

CHAIR: Yes, we can hear.

MR. CONRAD: Okay. My name is Troy Conrad. I'm the Director of DEP's Bureau of Environmental Cleanup & Brownfields, which encompasses both the Storage Tank Preventative Program and Corrective Action Program. I'm here today as a representative of Jessica Shirley, who's our Interim Acting Secretary.

Richard Negrin, who had been our Secretary, has resigned from the last session this week. Just going to kind of quickly go over how we use the money we received from USTIF.

I know for some of you, you've seen

this presentation previous years and I apologize for being redundant for you, but there may be others to whom this is new. So let me just kind of work through that real quickly to kind of give an idea of why we ask for what we ask for.

Just scroll down. Sorry about that. Bear with me here. All right. Sorry, folks, for the delay there.

So as part of our base allocation, we request money for state need sites. These are primarily sites where there's been released from a regular storage tank system and the owner is unable to address the contamination and potential impacts. In the past some of these sites might have been owners who have been recalcitrant, unwilling to cooperate with a process. Many of them, however, are folks that are - have limited or no financial means to actually address contamination.

More recently these actually can be truly orphan sites, where the entity that owned them no longer exists. As part of our state network, we have kind of a group of contractors who we have vetted who use USTIF money to help remove the underground tank system, remove contaminated soil and address groundwater contamination on the site. As part of that work trying to figure out where the contaminants have gone, who it's impacted.

We also work to provide treatment on people's private drinking water supplies. I'll touch on that a little bit later.

This year we're working on 15 active sites. Over the years I think we worked on as many as 50 total.

So I talked a little bit about private wells. Currently the Department has been working on 12 different private wells. We've installed point-of-entry treatment systems. These are systems that as the water is pulled up from the well, it runs to a filtering system and then back and provide water that's suitable for both use of the residents -. They often range from $3,000 in cost to install, anywhere from $1,000 to $3,000 a year to maintain, which includes confirmation sampling, to make sure that the water is safe for its intended use. I'll show you some slides here in just a minute.

In addition to the 12 point-of-entry treatment systems that we've installed and are maintaining, we also have four active remediation systems. These are systems we are generally treating contamination in groundwater.

Where we're able, we can limit exposure to contamination by hooking people up to public water.

We're doing other steps to keep people from touching and breathing or drinking - those options first in some cases of really just a choice on a system to degrade, remove contaminants and groundwater. These systems, on average, cost about $100,000 just to design and build and up to $70,000 per year for us to operate and provide oversight on.

This is an example of the point-of-entry treatment systems that we install in these homes. They almost look like two orange canisters that you might store oxygen in, or some other gas, and maybe you see in an industrial setting.

What you have inside them is actually finely ground activated carbon. So water enters one of the canisters at the top, percolates to the bottom. As it percolates to the bottom - adhere to the carbon, removing it from the water supply, and then it passes through a second canister, which is redundant and just designed to make sure that we're providing water that's protected for the homeowner.

Many new systems actually have mobile sampling ports before the first canister, between the canisters, afterwards, combination samples to gauge what the contamination level is coming into the home, and also ensure what's actually coming in the house is protected.

Here's an example of a larger system. Actually has four canisters. The number of canisters kind of varies on the amount to water consumption is, as well as the type contaminant concentration.

The other piece of our base allocation is the Underground Heating Level Cleanup Reimbursement Program. So this is designed for tanks that are less than 3,000 gallons in size, primarily founded at residential properties. As you can see in the photo, it is a Reimbursement Program. So people, after they perform the work, they soon make that reimbursement. There is a $1,000 deductible.

For many, many years, we outstripped our ability to actually process and provide reimbursements. For all the claims this last year, it's been a little slower than normal. I'd like to say I can articulate why, but honestly, I can't. We do see that there's been a trend, though, historically, between the housing market and applications. So the housing market is hot. People are buying and selling houses more frequently, or people are removing tanks to market real estate transactions. That could be part of the explanation for the recent trend.

There we go. So as part of the Release Prevention Program, obviously it's - it's trouble keeping it all down. So the Storage Tank Program in both Central Office, our six Regional Offices, provide oversight. Roughly 21,000 regulated underground storage tanks. Those on the Board are kind of familiar with businesses or institutions that have them.

We work in conjunction with 850 third party certified individuals. These are individuals who work in the control-equipment industry, who we evaluate their technical expertise and experience and grant certifications for them to install, modify, remove the systems and also verbal inspections on our behalf. During the course of the average calendar year, we have approximately 4,500 third-party inspections. So as you know, we send notices out to facilities. On a time frame specified in our regs, we ask them to choose one of the third-party inspectors with business facility guidance, their compliance and provides that information to the agency.

For those facilities that have significant problems are often followed by a physical inspection by staff. This redundant system is what we use to try to prevent releases to the extent we can. For the ones we can't prevent, to try to capture the process, both of which have benefits for the environment, but also for the fund itself.

As you know, certified installers are required to participate in Tank Installers Identification Fund. And the owners of underground storage tanks are also required to participate in USTIF.

While I know this is important to the Board, I can't emphasize how important is to our agency. There is a direct correlation between use of coverage sites that get cleaned up -. When people have use of coverage, we generally have cooperation, remediation process. In cases where they haven't maintained their coverage, they may ultimately become safety cleanup sites.

During the past year the Department has initiated actions against 24 certified companies with building TIIP fees. As we work with these companies on a daily basis, obviously we're looking to resolve building imbalances, not to develop some sort of combative or antagonistic relationships. We try to work with these voluntarily. We have referred 101 third-party inspections to our Regional Offices. So this is third-party inspector does the inspection. We know that these are paid up-to-date. Our DEP staffs are calling, making visits and ask them to pay the fees and take appropriate action. We've also performed, part of that, 68 physical inspections to verify noncompliant USTIF fees are brought up-to-date.

This is just a summary of our enforcement actions for the past calendar year, which include 4 field orders, 61 Notices of Violations, significant amount of USTIF fees that were paid as a result of our inspection enforcement activities.

Just a snapshot of our administrative functions here at Central Office. So we process roughly 1,700 store tank registration forms a year. These are forms that provide information about the regulated facilities that are providing USTIF fees to Department shares and the other distributors. So they include the systems that are onsite, physical characteristics of the system, include information about the individuals who installed them. And they are the basis of records for some of USTIF's billing actions, so they can rely on our records.

We also have 2,300 third-party inspection reports, where we verify, again, during the inspection, the fees are up-to-date. And then also as part of our administrative functions, we do about 5,500 modification reports. So I'm going to certify the individual performs work within these facilities. They notify us via these forms of work. We enter it into our system to share that information with USTIF, to ensure that there's a proper billing of TIIP fees.

Okay. Just again, brief overview of what we'll be doing, the agency, to collaborate with our colleagues here at the Department of Insurance. A little overview of how to use the money. This may be redundant for some of you.

Any questions about what we do before I actually begin the request -.

So under the Base Environmental Cleanup Program allocation request, and under that request, DEP conducts state cleanups of facilities where threats to human health are not being addressed due to recalcitrant or financial inability of the responsible party. DEP, also under this allocation, funds the underground storage tank reimbursements.

The statute authorizes up to $5.5 million annually for this allocation.

The Department is requesting no supplemental allocation for the current fiscal year. The Department is requesting the Board approve an allocation of 1.9 million for the fiscal year starting July 1st, 2024, and to approve expending any unused allocations for the prior year.

DEP estimates that $2.4 million in contract costs will be incurred to perform corrective action in 15 sites. There will be $370,000 for each, for personnel, administrative costs. And assuming that we fully use our allocation, 750,000 in our reimbursement program.

Under the Pollution Prevention grant allocation, which is more commonly referred to as pump and plug, this allocation encourages small tank owners to remove environmental threats posed by nonupgraded, abandoned underground damages. The law authorizes up to 350,000 annually for this allocation. The Department is requesting no supplemental allocation for the current fiscal year.

For the fiscal year, starting July 1st, 2024, DEP is requesting that the Board, through expending the unused allocations from the prior year, which will cover its estimated cost, $50,000.

Last but not least, the Department, under the investigation closure allocation, which covers DEP personnel, general operating costs for enforcement and administration of the corrective action regulations for UST releases not covered by Pennsylvania's federal grant or charged to the baseline Environmental Cleanup Program, the law authorizes up to $7 million annually to this allocation. The Department is requesting no supplemental allocation for the current fiscal year.

The DEP requests the Board approve an allocation of 7 million for the fiscal year starting July 1st, 2024 to approve of expending any unused allocations from the prior year.

In summary, for fiscal year '24-'25 DEP is requesting the Board approve allocations totaling 8.9 million of the 12.85 million the statute authorizes.

CHAIR: Thank you, Troy.

Do we have any questions? Hearing none at this time, I would accept a motion to accept DEP's request.

MR. GREINER: This is Andy Greiner.

I'd like to make a motion that we accept DEP's request for the $8.9 million.

CHAIR: Do I have a second?

MS. WISSMAN: I second that motion.

CHAIR: Any further discussion?

At this time we'll take a vote on the acceptance of DEP's funding request.

All those in favor say aye.

AYES RESPOND

CHAIR: Opposed?

Hearing none, the motion carries.

Troy, your recommendations have been accepted.

MR. CONRAD: Thanks, Steve.

CHAIR: Okay, moving on to administrative items.

Amy, would you like to start?

MS. FORBES-WITT: Sure. Thank you. I'm going to report on the claim summary. And these numbers are for the calendar year to date. As of November 30th, we've had 156 new claims received and four reopenings. So the total is 160 newly reported or reopened claims.

Claims closed that were eligible for payments equal 155 and two closed without a payment.

There were 21 denied claims and 23 claims that were withdrawn.

For the first 11 months of the year, the program has closed 201 claims. The total pending claim count is 792. The dollars paid thus far equals $27,641,796.19. The cost per closed claim equates to 255,952.49 on average.

Regarding the TIIP Program, there was one new claim received this year. One claim was closed as of November 30th, and we had three open TIIP claims. Last week another TIIP claim just became closed.

Therefore, the reserves are now set at 1.2 million. We have not paid any TIIP payments this year. That concludes claims information, but I have a few additions.

For the first time in FBS history, we are under 100 facilities that have a balance due. There were 91 as of December 5th. So this equates to over 98 percent of the owners paying off their balances thus far this year.

Also, we submitted our response to the EPA State Fund Soundness Survey on September 25th, and we were told that were the first state to do so. The EPA is continuing to review it over the winter and will reconvene with the funds next year for feedback.

Some of the highlights include, there were 871 open claims at the beginning of the fiscal year, in contrast to 906 open claims in 2022. A total of 187 claims were closed, compared to 170 in 2022. And the median cost for cleanup was 237,540 versus 245,179 in 2022.

If anyone has any questions, you can ask them now.

CHAIR: Thank you, Amy.

Moving on. Ben, would you like to discuss the financial statements?

ATTORNEY LORAH: Sure.

I'll just hit a couple of highlights of the financial statement. So for the period ending September 30th, 2023, USTIF collected $12,628,095 in fees. That includes gallon capacity and TIIP fees.

USTIF posted a net decrease in their fair value of investments of $15,121,304 and received $2,926,865 in interest and dividend income. For this period, the USTIF Fund paid professional services totaling $1,230,506. That includes PID personnel as well as ICF's fees, which is USTIF's third-party administrator.

As far as claims and legal expenses, those totaled 8,153,962 for this period. And during this period, DEP allocations were $1,125,417 for the Environmental Cleanup Program and $318,623 for investigation and closure costs. The net change in the funds balance for this period was a decrease of $10,396,636, and it currently stands at $393,031,579.

And at the end of the third quarter, the actuarial liability for the fund was $90,341,532.

So if anyone has any questions about the financials, I'll answer them. The full financial statements are included in the Board's packet.

CHAIR: Hearing none. We'll move on to the DEP Pollution Prevention Grant Program statistics.

Troy, you're on.

MR. CONRAD: The current fiscal year began on July 1st, 2023. No grants have been approved, and one application is pending for $2,500. Since the program's inception on January 30th, 1998, 1,156 grants have been approved, totaling $5.9 million.

Steve, I'll move on to Environmental Cleanup Program statistics, if that's okay.

CHAIR: Please.

MR. CONRAD: For the current fiscal year that began on July 1st, 2023, DEP has expended approximately 359,000 of the approved allocation. As mentioned earlier, DEP is currently working on 15 state need sites. To date, 40 heating oil reimbursements have been approved, totaling $157,510. Seven applications are - sorry seven reimbursement applications are pending?

CHAIR: Do we have any questions?

Troy, thank you.

Moving on to unfinished business. Preston, if you would.

ATTORNEY BUCKMAN: Yes, sir. Thank you, Steve.

Let me begin by refreshing everyone's memory as to why we are here this morning to talk about the proposed amendments to USTIF's regulations.

Last spring - this past spring, April of '23, USTIF received a Decision from the Pennsylvania Supreme Court in a case called Shrom, S-H-R-O-M case. And the Shrom case involved the issue of when the registration of a tank or tanks and the registration fees for that tank or tanks had to be paid in order to be eligible for USTIF -.

USTIF had denied the claim on the

basis that the Shroms' tanks were not registered and the registration fees had not been paid at the time the release giving rise to their claim was discovered. The Shroms had certain arguments as to why that was not the correct interpretation of the Act and the regulations. And ultimately the Supreme Court decided in the Shroms' favor and found that a claimant's tank or tanks do not have to be registered and the fees paid at the time the release is discovered, but instead the tank or tanks need to be registered and the fees paid by the time of USTIF's claim eligibility determination.

The Court also, towards the end of its opinion, essentially invited USTIF, if it so desired, to promulgate amendments to its regulations to reflect its policy position on this issue, if it would like to do so.

So at the June meeting, the Board granted - at that time it was Rick Burgan - the authority to go ahead and explore a possible amendment to USTIF's eligibility provisions as contained within USTIF's regulations. That transpired over this past summer. And at the September meeting, possible amendments to the eligibility provision section were floated in advance of the September meeting to and prior thereto to the meeting in September.

It came to USTIF's attention that DEP was requesting some time to think about the proposed amendments and vet them internally and so forth, which was fine. And so a decision on the amendments was deferred until today - until December.

So between September and December, there were various discussions with DEP, after they had a chance to think about the amendments, vet them internally.

And the result of those discussions is reflected in subparagraph three. And in a nutshell, DEP was seeking for this eligibility criterion to be loosened a little bit. And so the thought was, well, why don't we tie the registration requirement and the registration fee payment requirement to the 60 day claim notification provision that is already in USTIF's regulations? And of course that's the provision that simply says that a claimant must report a claim within 60 days of confirmation.

So that is what you see there in subparagraph three. And what we're trying to do today, the point of this exercise is to get the Board's thoughts on these amendments. They are otherwise unchanged. It's only subparagraph three that was tweaked between September and today. Get the Board's thoughts, questions, comments on these amendments, and then we would take a vote seeking the Board's approval of the amendments. And if we receive the Board's approval of the amendments, then we can begin the long process of seeking to promulgate these regulatory amendments.

But we can't do that without the Board's approval.

So with that, I would open up the floor to questions or comments.

MR. GREINER: This is Andy Greiner. The number three there, does that incentivize people not to pay their fees until such time they know they have a release?

ATTORNEY BUCKMAN: It's hard to answer that question, Andy. Theoretically, yes.

Practically, I would say probably not. I think it's important to keep in mind that this subsection is used very infrequently as the basis for denying claims. It just simply does not come into play very often.

As you know, as the Board knows, typically claims are denied for lack of payment on the Section 705 fees, which is subsection two, or the claim was denied. Those are the biggest bases for denials. And this one doesn't come into play all that often.

So could someone take the position that they won't register, kindly register their tank and pay their fees because of this language? Yes, that theoretically could happen. Practically, do I think that's a major issue? I would say no.

MR. GREINER: Okay. Thank you. I think the case that caused us to do this, there was a transfer of the property, I think, through an estate maybe, that, I guess, could cause some problems, but I guess we can't help that anyway, other situations.

ATTORNEY BUCKMAN: Right. And I should mention also that when we first talked about the idea of amending USTIF's regulations at the June - we sort of discussed the possibility of a two-phase approach, whereby initially the amendments would be very focused. And that focus would be solely upon this eligibility provision and essentially addressing the Shrom Decision.

If this eligibility provision does, in fact, get amended as envisioned, I think the next step will be a larger regulatory amendment initiative that can address a myriad of operational issues and concerns that USTIF has become aware of over the last 20 years. And one of those, Andy, I think - and Ben, can probably speak to this better than I can, but one of those has to do generally with the scenarios that you mentioned where there's a transfer of ownership and the issues that come about as a result of those kinds of scenarios. But that would be kind of phase two, if you will, of any regulatory -.

MR. GREINER: Thank you.

CHAIR: Well, Preston, what are you actually asking? Do you want the Board to take a vote, or what action are you asking for?

ATTORNEY BUCKMAN: Steve, what we would be asking for is a motion approving these proposed amendments to the USTIF regulations.

CHAIR: Okay. A further question. If it's not approved, what happens?

ATTORNEY BUCKMAN: Well, if it's not approved, then we would have to talk about why, so that we could engage in further amendments to address concerns the Board would express in disapproving the amendments as currently drafted.

CHAIR: Will this open up further action on those cases that were, indeed, refused because the fees were not paid?

ATTORNEY BUCKMAN: No. This is prospective only.

ATTORNEY LORAH: Mr. Hieber, Stephanie has raised her hand for a comment.

MS. WISSMAN: Yes. Thank you, Ben.

Preston, I just want to confirm that these changes would go through the IRRC process and not the legislative process?

ATTORNEY BUCKMAN: That is correct. Proposed amendments to regulations is an IRRC function. This would not involve any changes to the Tank Act, which is legislation. Any amendments to the Tank Act would have to go through the General Assembly. But this is strictly a proposed regulatory amendment. And yes, that is IRRC.

MS. WISSMAN: Very good. Thank you so much.

ATTORNEY BUCKMAN: And that's the Independent Regulatory Review Committee.

CHAIR: Do we have any further questions or comments?

Do we have a motion?

MR. PERRY: This is Greg Perry. I move that we accept the proposed changes to the regulations.

MR. GREINER: This is Andy Greiner. I second that.

CHAIR: Very good. Let's take a vote.

All those in favor say aye.

AYES RESPOND

CHAIR: Opposed?

Hearing none, the motion carries, Preston.

ATTORNEY BUCKMAN: Thank you, Steve.

So just to summarize, then, with that approval, USTIF will initiate the process with IRRC to hopefully ultimately have these amendments enacted to USTIF eligibility provision within its - within its regulations. And of course we will keep the Board apprised. This will be an item, I would imagine, on every agenda at every Board meeting over the next however many Board meetings it takes. But we will certainly keep you apprised of what's going on. Thank you.

CHAIR: Thank you, Preston. Okay, moving on.

Ben, if you'd like to discuss staff updates, please.

ATTORNEY LORAH: Yes, just a couple

updates for the staff since the last meeting. So since the last meeting, we've hired Stephen Travis as a claims evaluator.

And also Bob Sabatini, who was our management technician who handled fee collection as well as managing this meeting, he left to pursue a new career opportunity. So we are in the process of finding a replacement for that position.

And that's all for the staff updates.

Okay. So the next item on the agenda is the 2024 meeting dates. They were circulated prior to this meeting, and they're as follows. So it will be March 14, June 13, September 12 and December 12 for the next calendar year.

CHAIR: Very good. All right, at this time, I take a motion for adjournment.

MS. WISSMAN: So move, Mr. Chair.

MR. GREINER: Andy Greiner, second.

CHAIR: Very good. Thanks, Andy.

All right, I'd like to wish everybody a very successful holiday season. And we are now adjourned. Thank you.

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MEETING CONCLUDED AT 11:09 A.M.

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CERTIFICATE

I hereby certify that the foregoing proceedings, hearing held before Chair Hieber, was reported by me on December 14, 2023 and that I, Sophia Mahoney, read this transcript, and that I attest that this transcript is a true and accurate record of the proceeding.

Date the 2 day of January, 2024

Sophia Mahoney,
Court Reporter