

COMMONWEALTH OF PENNSYLVANIA  
UNDERGROUND STORAGE TANK INDEMNIFICATION BOARD

\* \* \* \* \*

IN RE: SECOND QUARTER OF 2023 BOARD MEETING

\* \* \* \* \*

BEFORE: RICHARD BURGAN, Chair  
William Buckfelder, Member  
Alex Baloga, Member  
J. Andrew Greiner, Member  
Kevin Forsythe, Member  
Troy Conrad, Member  
Nila Manning, Member  
Laura Slaymaker, Member  
Greg Perry, Member  
Ted Harris, Member  
Jonathan Lutz, Member  
Chris Hartman, Member

HEARING: Thursday, June 8, 2023  
10:02 a.m.

LOCATION: Capital Associates Building  
901 North Seventh Street  
Harrisburg, PA 17102

Reporter: Sophia Mahoney

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PRESTON M. BUCKMAN, ESQUIRE  
Pennsylvania Insurance Department  
901 North 7th Street  
Suite 200  
Harrisburg, PA 17102  
Counsel for Pennsylvania Insurance Department

Also Present:  
Robert Sabitini  
James Ferro  
Amy Forbes-Witt  
Andrew McMenamin

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CHAIR: All right. I've got ten o'clock here. Let me run through some housekeeping, because there is a vote today. So we need to assure that there is a quorum. I know Mike Humphreys is not attending. Steve Hieber will not be attending. So I'll be - be running the meeting. Bill Buckfelder is here. Stephanie had a prior commitment.

Is Alex Baloga on the call?

MR. BALOGA: Yeah, I'm here.

CHAIR: Great. Thank you, Alex. I know Andy Greiner is on. Scott Hafer had a commitment.

Kevin Forsythe, are you on the call?

MR. FORSYTHE: Yeah. I'm present.

CHAIR: Great. You got plenty present. Troy Conrad's here representing DEP. I did see Nila Manning dial in.

Is that correct, Nila?

MS. MANNING: Yes, I'm here.

CHAIR: Thank you. Laura Slaymaker is here. Greg Perry is here. Is Gauttam Patel here? Okay.

1 I did see Ted Harris dial in. I  
2 believe I saw Jonathan Lutz dial in.

3 Is that correct?

4 MR. LUTZ: Yes, I'm on.

5 CHAIR: Okay. How about Mike Howells?  
6 No. I think I saw - is Chris Hartman on?

7 MR. HARTMAN: Yep. I'm here.

8 CHAIR: Okay. I believe I covered  
9 everybody. How about Andrew McMenamin?

10 MR. MCMENAMIN: Yes. I'm here.

11 CHAIR: Great. Welcome. I'll get to  
12 your introduction in a moment.

13 All right, Pres, I think you've got -  
14 we got full house. So thank you all for attending.  
15 Okay, roll call. We do have a quorum. Mostly  
16 everybody - you see there's only a couple of people.  
17 We have sparse attendance here today. That's no  
18 problem, as long as we've got a virtual audience.  
19 Just remember, if you are going to come on the  
20 record, for the benefit of those in the room, as  
21 well as the court reporter, if you're going to  
22 speak, please identify yourself first so that we can  
23 mark you on the record accordingly. And also, you  
24 know, since we've got a full house virtual-wise,  
25 unless you are speaking, please keep your

1 microphones on mute. And with that, I will now call  
2 the USTIF Board meeting for the second quarter of  
3 2023 to order.

4 CHAIR: And I see I'm the first one on  
5 the agender - on the agenda with Board member  
6 updates and term renewals. It's been a busy spring.  
7 Some folks - we have some new nominees to the Board.  
8 We've got some reappointments to the Board. So I'm  
9 going to go down in order in which they came to me.

10 So Andy Greiner, who is the public  
11 member, and Bill Buckfelder, to my right here, who  
12 represents local government, both were reappointed  
13 to their terms on March 14th, 2023. Andy, that term  
14 runs for three years, and Bill, yours runs out for  
15 another two years. So you're good there. Mr.  
16 Hartman, who sort of was a bouncing ball because of  
17 leadership changes in the House, was reappointed by  
18 Bryan Cutler, the House Republican leader, on April  
19 4th of 2023. We do have another nomination that  
20 came in from the speaker of the House. Honorable  
21 Joanna McClinton nominated House Representative Greg  
22 Vitali, who is the chair of the House Environmental  
23 Resource and Energy Committee.

24 Attending in his absence today is his  
25 appointed alternate, who is Andrew McMenamin. So

1 welcome, Andrew. Following that is Stephanie  
2 Wissman, who's with the Associated Petroleum  
3 Industries. She was reappointed on May 10th of  
4 2023, and her term runs out for three years. So it  
5 looks -.

6 MR. LUTZ: Hey -.

7 CHAIR: Hey.

8 MR. LUTZ: Hey, Richard?

9 CHAIR: Sure.

10 MR. LUTZ: Hey, this is Jonathan.  
11 Just for your files. We actually changed our name,  
12 I think it was about two years ago now, from  
13 Associated Petroleum Industries of Pennsylvania to  
14 reflect our parent organization, the American  
15 Petroleum Institute of Pennsylvania. So it's still  
16 API PA.

17 CHAIR: Yeah.

18 MR. LUTZ: But we're not Associated  
19 Petroleum Industries anymore.

20 CHAIR: Oh. It's just API then?

21 MR. LUTZ: Yeah.

22 CHAIR: Okay, Thank you. Well, I  
23 actually have that written here. I just didn't say  
24 what I had written.

25 MR. LUTZ: Okay. Well, then we're



1 good.

2                   CHAIR: Yeah. I know Stephanie  
3 dropped me a note about that. There was name  
4 change, and I did write Stephanie Wissman, API. So  
5 that, fortunately, is done for all the  
6 reappointments for this year. That housekeeping is  
7 done. Next year for 2024 we have Alex Baloga, and  
8 he will come up on March 2nd of 2024. And Greg  
9 Perry, you're way out there. Your term doesn't  
10 expire until next December, but as those dates  
11 approach, you know, we'll get you reappointed should  
12 you wish to continue to serve.

13                   Steve Hieber is not here today, but  
14 I'm going to give him a shout out. As I was looking  
15 for these - through the records and when you folks  
16 came on, Steve Hieber has been on the Board for 25  
17 years, so I wanted - even though he's not here, I  
18 wanted to give him a shout out on the record for his  
19 tenure, which is applaudable.

20                   So that is it for Board members  
21 updates and term renewals. Does anybody have any  
22 questions in regards to that area? Okay. Seeing  
23 none, we will move on to the next item, which  
24 involves a recent Supreme Court decision and how the  
25 program area plans to deal with that moving forward.

1 And to kick that off, I will defer to Board Counsel  
2 Pres Buckman.

3 ATTORNEY BUCKMAN: Good morning,  
4 everyone. So as the agenda indicates, this is the  
5 time to talk about a recent court decision that we  
6 have received and what the Fund is considering doing  
7 in light of having received that decision. So I'm  
8 going to talk a little bit about the decision  
9 itself, and then I'll turn to Rick to talk a little  
10 bit about what the Fund is thinking about doing in  
11 light of the decision. My intention today is not to  
12 dive into the weeds, so to speak, with respect to  
13 the decision, out of respect for people's time and  
14 also in recognition of the forum that we're in  
15 today. But having said that, I invite any Board  
16 member who would like to talk about the decision in  
17 more detail to please contact me and I'd be happy to  
18 answer all your questions or give you a more  
19 detailed analysis.

20 So this was a decision from the  
21 Pennsylvania Supreme Court. That is highly unusual  
22 for USTIF. As you all know, USTIF's been around now  
23 for going on 30 years, and this is only the second  
24 Pennsylvania Supreme Court decision that the Fund  
25 and the Board have ever received. So it's obviously

1 highly unusual. The first decision from the  
2 Pennsylvania Supreme Court, which was about ten  
3 years ago, was favorable to the Fund and to the  
4 Board. This one was not.

5           And so by way of brief background,  
6 this case involved a claim from a couple named the  
7 Shroms. The Shroms had inherited property on which  
8 five underground storage tanks were located. At the  
9 time of the inheritance they were leasing the  
10 property or the property was being re-leased to a  
11 tenant who ran a retail gasoline sales business and  
12 also had a convenience store and a sandwich shop on  
13 the property as well. Eventually the tenant decided  
14 to move on and he vacated his operation. And  
15 thereafter, the Shroms decided that they wanted to  
16 remove the tanks, presumably because they weren't  
17 interested in carrying on the retail gasoline sales  
18 business.

19           So they hired a contractor. And it  
20 was during the removal of the tanks that the  
21 releases and the contamination was discovered. And  
22 that is when the Shroms decided to seek coverage  
23 from USTIF by submitting a claim. When USTIF got  
24 the Shroms' claim - and of course that goes to  
25 USTIF's third-party administrator ICF to take a peek

1 at. And the recommendation from ICF was to deny the  
2 claim because the tanks were not registered at the  
3 time that the release giving rise to their claim had  
4 been discovered. And in particular, the Fund was  
5 pointing to the eligibility criteria within the Tank  
6 Act, and more specifically, subparagraph three of  
7 the eligibility section, which says, in order to  
8 receive a payment from the Underground Storage Tank  
9 Indemnification Fund, a claimant shall meet the  
10 following eligibility requirements. And there's  
11 five of them, and then there's a catch all at the  
12 end about promulgating regulations. And so number  
13 three says the tank has been registered in  
14 accordance with the requirements of Section 503.

15 Section 503 is a section within the  
16 Tank Act that talks about, not surprisingly, what a  
17 tank owner needs to do to properly register a tank  
18 and pay their fee. So the Fund denied the claim  
19 because the tanks were not registered at the time  
20 the Shroms discovered the release that gave rise to  
21 their claim. The Shroms appealed that denial by the  
22 fund to the executive director of the Fund, Rick.  
23 Rick upheld the Fund's denial. The Shroms then  
24 appealed to the Board. And as typically happens, a  
25 presiding officer was appointed to hear the matter

1 on behalf of the Board. And the presiding officer  
2 eventually issued a proposed decision to the Board  
3 recommending that the Fund's denial be upheld.

4           The Shroms filed exceptions to that  
5 recommended decision or that proposed decision. The  
6 Fund responded. The matter came before the Board in  
7 executive session, as all appeal matters do, and the  
8 Board, after due consideration and review, decided  
9 to accept the presiding officer's recommendation and  
10 uphold the denial. The Shroms then appealed the  
11 Board's decision to the Commonwealth Court, and the  
12 Commonwealth Court reversed and found that the  
13 Shroms should in fact be eligible for Fund coverage.  
14 The Fund then decided to seek a review of the  
15 Commonwealth Court's decision by the Pennsylvania  
16 Supreme Court.

17           Now, those types of reviews by the  
18 Pennsylvania Supreme Court in these situations are  
19 discretionary. The Supreme Court does not have to  
20 hear that type of appeal, and in fact, they hear  
21 very few discretionary appeals. Most of the appeals  
22 that come before the Pennsylvania Supreme Court are,  
23 as of right, they're appeals that they have to hear.  
24 So it was unusual that the Pennsylvania Supreme  
25 Court decided to grant the Fund's petition for

1 review and hear the appeal. Ultimately, after oral  
2 argument last fall the Supreme Court upheld the  
3 Commonwealth Court's denial of the claim.

4           So why? In reading the decision, I  
5 would make a couple of observations. And again, I  
6 don't want to get too far into the weeds here, but I  
7 would make a couple observations. One is that I  
8 believe that ultimately the court was very cognizant  
9 of the introductory part of the Tank Act that  
10 instructs that the Act's provisions and attendant  
11 regulations are to be liberally construed in order  
12 to fully protect the public health, welfare and  
13 safety of the residents of this Commonwealth. And  
14 that's by obviously maintaining clean water,  
15 pristine land, being able to clean up relate -  
16 releases and the contamination related to releases.  
17 So the legislature has said to the courts, when  
18 you're interpreting the Tank Act you need to  
19 liberally construe it, and you need to do that in  
20 the interest of the health, safety and welfare of  
21 the Commonwealth citizenry.

22           I think that was very much on the  
23 minds of the Pennsylvania Supreme Court when they  
24 went through their exercise of statutory  
25 interpretation. And I would - and ultimately found

1 for coverage. Found that the Fund should reimburse  
2 the Shroms for the remediation costs that they had  
3 incurred in cleaning up the property. And along  
4 those lines, along that theme, along that vein, I  
5 would also point to the concurring opinion of  
6 Justice Mundy. Now, the Pennsylvania Supreme Court  
7 typically has seven justices. There are currently  
8 only six because there was a death several months  
9 ago, and they're going through the process of  
10 reelecting a new justice. So this case was decided  
11 by six justices. Five of them were part of what's  
12 called a majority decision. So Justice Brobson  
13 wrote it, and four of them joined him as part of the  
14 majority's decision.

15           The 6th justice, Justice Mundy, wrote  
16 what's called a concurring opinion. What that means  
17 is she came out in the same place in the end, and  
18 she in fact also agreed that eligibility should be  
19 extended to the Shroms and they should be - receive  
20 funds - Fund benefits. But I thought what she said  
21 in her concurring opinion was interesting. And I  
22 will read you a couple of passages here. She says I  
23 would evaluate Subsection 3, that's the subsection  
24 of the eligibility requirement section of the Tank  
25 Act that says the tanks had to be registered. I

1 would evaluate Subsection 3 on its own terms, and I  
2 would ultimately find it ambiguous, as I believe it  
3 is susceptible of two reasonable interpretations.  
4 On the one hand, there is no dispute that tanks are  
5 required to be registered on annual basis. And she  
6 points to Section 503 and the DEP regulations that  
7 are cited therein. And it seems unlikely the  
8 General Assembly intended to allow for strategic  
9 behavior whereby a claimant can elect not to pay a  
10 tank's registration fees unless and until a release  
11 is discovered and then obtain benefits by belatedly  
12 bringing the account current.

13                   In support of that language, she cites  
14 a Commonwealth Court case called M. H. Davis, in  
15 which the Commonwealth Court found that one of the  
16 other eligibility criteria, namely Subsection 2,  
17 that says a claimant's capacity and throughput fees  
18 have to be current, means that in order to be  
19 eligible under that Subsection 2 eligibility  
20 criteria the capacity fees and the throughput fees  
21 need to be current at the time the release is  
22 discovered. And that was the Fund's biggest  
23 position here, was there's law in the books that  
24 says the capacity fees and the throughput fees,  
25 known as Section 705 fees, they have to be paid at



1 the time a release is discovered. And so therefore  
2 it's logical to conclude that so do the registration  
3 fees under Subsection 3. And that's what Justice  
4 Mundy is getting at here when she's pointing out the  
5 reasonableness of the Fund's interpretation of the  
6 Act.

7           Then she goes on, because she said  
8 both sides have a reasonable interpretation, and she  
9 says, on the other hand, as the majority develops  
10 and that's in the five justice opinion, the main  
11 opinion, Subsection 3, does not - explicitly say  
12 tank registration fees must be current at the time  
13 the release is discovered in order for benefits to  
14 be available later on. And that is true. It does  
15 not. Further, the preparatory text, and she's  
16 referring to that - the opening paragraph of the  
17 eligibility section. She says further, the  
18 preparatory text indicates that, quote, in order to  
19 receive a payment from the Underground Storage Tank  
20 Indemnification Fund a claimant shall meet the  
21 eligibility requirements listed. Because the  
22 temporal focus of this language is on the receipt of  
23 benefits, it can reasonably be understood as  
24 allowing for belated compliance so long as the Fund  
25 does not actually pay out any benefits until the

1 requirements are satisfied. So she presents both  
2 sides' arguments, or summarizes both sides'  
3 arguments in support of their interpretation of the  
4 Tank Act eligibility section that is in question  
5 here, the registration requirement.

6           And she concludes by saying, given  
7 these competing interpretations, I would resolve the  
8 ambiguity consistent with the result arrived at by  
9 the majority. As the present dispute illustrates,  
10 there is no construction of the Act that can satisfy  
11 all legislative objectives. And while adopting the  
12 Fund's interpretation would disincentivize strategic  
13 behavior, I believe that construction endorsed by  
14 the majority in service of protecting the public  
15 health and welfare advances weightier governmental  
16 interests consistent with the General Assembly's  
17 legislative findings. So again, she comes out  
18 finding for coverage for these claimants, pointing  
19 to that introductory language in the Act that says  
20 the Act shall be liberally construed in order to  
21 protect the health, safety and welfare of the  
22 Commonwealth citizens.

23           So I think at the end of the day that  
24 was a huge part of why the Supreme Court landed  
25 where it did. It was involved in statutory

1 construction. It had been instructed by the General  
2 Assembly to liberally construe the statute. And I  
3 think at the end of the day they found a coverage in  
4 order to do exactly that.

5           The other point I'll make here is  
6 given the - where the Supreme Court came out, the  
7 other important point they make is, and this is at  
8 the very, very end of their decision, in fact, it's  
9 on the very last page. They say, and this is from  
10 the majority's decision, the main decision,  
11 therefore, to the extent that the Fund wishes to  
12 impose an eligibility requirement relative to the  
13 timing of USTIF registration and the payment of  
14 Section 503 registration fees in the future, the  
15 Board must adopt a regulation to that effect. So in  
16 light of that, I'm going to now turn it over to Rick  
17 to talk a little bit about what the Fund is thinking  
18 about and considering in light of the decision and  
19 that directive from the Supreme Court.

20           CHAIR: Okay. So we have this  
21 decision here. What - what the court said - what  
22 section - actually Section 503 in the Tank Act says  
23 is DEP's tank registration fees have to be paid on  
24 an annual basis. There's nothing in there about at  
25 the time of the discovery of the loss. And that's

1 where we got hung up. The court then came out at  
2 the end of the decision and said if there's a USTIF  
3 claim and there's a deficiency recognized in tank  
4 fees, the tank owner can actually pay those fees at  
5 any time prior to the final decision from ICF and  
6 still get coverage. Now we've got some claims folks  
7 on the Board. I know Andy's out there. This is in  
8 a sense buying coverage after a loss. We thought  
9 that had been dealt with M. H. Davis, but it was  
10 not. So back to the Supreme Court's decision on the  
11 last page it says - yeah, you know, right now we've  
12 lost this decision, and the best way to fix it is to  
13 promulgate a reg change.

14                   Since that decision came down we've  
15 had several high level conversations with Laura;  
16 Mike Humphreys, acting commissioner; Jodi Frantz,  
17 executive commissioner; our policy folks; our  
18 legislative folks; OGC. We've all got our heads  
19 together on this, and it seems the best way to  
20 resolve this is to promulgate a regulation change.  
21 And that is our plan moving forward. We will not be  
22 changing the Tank Act itself. So we - the Tank Act  
23 is Act 32 of 1989. We will not be going that  
24 direction. We operate basically out of Chapter 977,  
25 which is where the Section 705 fees are at within

1 our eligibility requirements. Because we don't have  
2 to go the route of actually changing an act, that  
3 we're just changing a regulation, it's a much easier  
4 lift, it's much cleaner and it's much quicker.  
5 There are some areas in the eligibility requirements  
6 which have always given some of us heartburn, and  
7 this is going to give us an opportunity to clean  
8 some of those up.

9           Basically what we're going to do to  
10 the Chapter 977 regulation, Section 705, is insert  
11 language that says all fees must be paid at the time  
12 of the discovery of the loss and that should pin it  
13 down to that date. You can't buy coverage  
14 afterwards. Fees must be kept current. And that  
15 should clean it up and resolve this moving forward.

16           I'd say we've had some several high  
17 level conversations with the Department, senior  
18 folks. They are on board with this. These have all  
19 been preliminary high level discussions. Nothing  
20 has been finite yet. But to go that route, and  
21 because USTIF is overseen by a board, we need your  
22 approval, or I need your approval to keep on - to  
23 keep the discussions going with the Department,  
24 which would ultimately lead to some more defining,  
25 some more cleaning up of the Chapter 977

1 regulations, just dealing specifically with the  
2 USTIF eligibility requirements. So that is where  
3 we're at.

4 ATTORNEY BUCKMAN: Let me jump in real  
5 quick. It's worth noting that in the original Tank  
6 Act, that - as Rick mentioned, was enacted in 1989.  
7 With respect to the eligibility section, there are  
8 six requirements, but the last one says additional  
9 eligibility requirements which the Board may adopt  
10 by regulation. So you have the owner/operator  
11 requirement, you have the Section 70 fees - 705 fees  
12 requirement, you have the registration requirement  
13 that was the subject of the Shrom case. The  
14 owner/operator has obtained appropriate permit  
15 certifications. And the fifth one that has to do  
16 with the claim having arisen after the Fund came  
17 into being in 1994.

18 So the legislature when they - when  
19 they enacted the Tank Act always envisioned that  
20 their - that the Board would have the ability as  
21 things developed over the years to promulgate  
22 regulations as needed. And in fact, the Board did  
23 that in the regulations that became effective in  
24 January of 2002. There were two or three  
25 eligibility requirements added. There was - there

1 was the 60-day notice requirement was added. There  
2 was the Cooperation Notice was required. And what  
3 that was, was it was a recognition by the Fund and  
4 the Board that, hey, you know, we've now been in  
5 operation for several years, and it has come to our  
6 attention that in addition to the original  
7 eligibility requirements, we really ought to add a  
8 couple more here. And so you got the 60-day  
9 requirement, you got the cooperation requirement.

10 And so now the Fund and the Board have  
11 the ability, the legislature has given the Board in  
12 particular the authority to promulgate regulations  
13 when it comes to their attention that there's  
14 something they believe needs to be corrected, and  
15 that's what this initiative would be. So I think at  
16 this time it's probably appropriate to open the  
17 floor to questions and comments and any discussion  
18 anyone would like to have.

19 MR. GREINER: Rick and Pres, this is  
20 Andy Greiner. A couple questions. Do we - do we -  
21 are we - did that decision open the Board to other  
22 liabilities for claims that have been denied in the  
23 past on the same premise?

24 ATTORNEY BUCKMAN: No. No, it's  
25 perspective only, Andy, and specific to these - to

1 these claimants.

2 MR. GREINER: Yeah. Okay.

3 The other question is, if we do change  
4 the regulation requiring that the registration be  
5 current, does that still - that doesn't eliminate  
6 somebody that has an unregistered tank, wants to get  
7 rid of it, has a contractor come in, they find that  
8 it was leaking before they report a claim, they get  
9 it registered, and then they report the claim. Is  
10 that still a possibility? Is there any way to -  
11 wording in the regulation to eliminate that type of  
12 situation, or is - it's just not possible?

13 CHAIR: It happens, Andy. We see it  
14 all the time. But -

15 CHAIR: -we still accept that in  
16 because we're using that date of discovery as the -  
17 you know, the target date. So, yeah, if they find  
18 they've got an unregistered tank, they can go ahead  
19 and register that with DEP, then turn the claim in  
20 and we will still honor that because the reg - the  
21 straight interpretation of that is the tank must be  
22 registered. And so it technically is when it comes  
23 in the door. So, yeah, we will honor those claims.

24 To get to your point, Andy, we did  
25 some research on this as to how many claims we have



1 specifically denied for registration fees only,  
2 only, and there have only been seven prior ones.

3 MR. GREINER: Okay.

4 CHAIR: Now, there are -I will add on  
5 to that, that tank being not registered - we've also  
6 got this denial package called combination. So it  
7 may have been - that - that requirement may have  
8 been in addition to another one, such as capacity  
9 fees not paid, throughput fees not paid. So you  
10 could have had a 60-day violation and a tank not -  
11 tank fee not paid. But as far as we're - this was  
12 kind of a one off situation, but there's been seven  
13 in the past and we lost this one. But I think that  
14 answers your - I hope that answers your question,  
15 but it needs -.

16 MR. GREINER: I think it does. It  
17 does.

18 CHAIR: Yeah.

19 MR. GREINER: The other - this is sort  
20 of a question or comment. I don't know if there's a  
21 correct answer, but the way the Supreme Court  
22 interpreted the Act with the requirement of liberal  
23 application, you know, in the benefit of the welfare  
24 of the environment and of people, which I agree  
25 with, does any regulation that we enact, will it be

1 over - will be able to overcome that type of  
2 decision by the Supreme Court going forward?

3 ATTORNEY BUCKMAN: So I think, Andy,  
4 that's a good question. And I think the more  
5 specific the eligibility criteria is that gives rise  
6 to the Fund's denial, the less likely it is that it  
7 could ever be overturned. Because - the reason I  
8 say that is because notwithstanding that  
9 introductory language in the Tank Act that says it  
10 needs to be liberally construed in order to protect  
11 health, safety, welfare, etcetera, notwithstanding  
12 that, when a court goes through a statutory  
13 construction exercise they are confined to do so  
14 under what's called the Statutory Construction Act.  
15 And that Statutory Construction Act has certain  
16 principles in it. And one of them is that they are  
17 not permitted to basically ignore the letter of the  
18 law in order to promote what they think the spirit  
19 of the law should be. So if the language is plain,  
20 it's unambiguous, which we would intend this  
21 language to be, then it is unlikely that it would  
22 ever lead to some type of reversal.

23 The problem here was when the Shroms  
24 said - and the Board recognized this. When the  
25 Shroms argued that there is no language in the Act

1 or the regs that says, specifically says the tanks  
2 have to be registered and the fees paid at the time  
3 the release is discovered, they're correct. There  
4 isn't. So this exercise is geared towards putting  
5 that specific language in there so the Fund and the  
6 Board don't find themselves in the position down the  
7 road if they deny a claim based on a lack of  
8 registration and registration fees paid. They're  
9 not in the same position. They can point to very  
10 express, explicit language saying, if you didn't do  
11 this when you discovered the release, you're  
12 ineligible.

13 MR. GREINER: Thank you.

14 CHAIR: Does anybody else have any -  
15 any comment? I know this is - this is - it's been  
16 an interesting ride over the past four or five  
17 years. But like Pres said, if you folks have  
18 questions, please reach out to us. We're always  
19 available. We'll - and we'll sort through it. Does  
20 anybody else have any comments, questions,  
21 statements? Okay.

22 MR. FORSYTHE: Yes. This is Kevin  
23 Forsythe.

24 CHAIR: Yeah.

25 MR. FORSYTHE: What - what's the

1 situation with things that we voted on before where  
2 - how does that affect those moving forward?

3 CHAIR: It will have no effect. So -

4 MR. FORSYTHE: Okay. Because I  
5 just -.

6 CHAIR: Yeah. They can't reach back  
7 with a decision. We ran into this a few years ago.  
8 They can't reach back. So the - it's - as Pres  
9 said, it's not retrospective, it's prospective. So  
10 this governs our eligibility, or Amy's eligibility  
11 investigations moving forward from the date of that  
12 decision. So it can't go back and correct those  
13 other seven claims that were strictly denied for  
14 this. It's just going to be for the date moving  
15 forward. Okay.

16 We need to put this on the floor so I  
17 can continue, you know, in my discussions with our  
18 folks to get this regulation change promulgated.  
19 But before we move forward, I need the Board's  
20 blessing, basically. Our plan is to continue  
21 discussions, you know, with our senior management  
22 folks and then come back to the Board in September  
23 with the proposed language. I think that was the  
24 plan. Right?

25 ATTORNEY BUCKMAN: Yes.

1           CHAIR: Yeah. So we do have some  
2 language already drawn up. We'll take another look  
3 at it. But before we, you know, start down the path  
4 of contacting folks to put this in motion we need  
5 the Board's blessing. So I would ask for a vote at  
6 this time.

7           ATTORNEY BUCKMAN: A motion.

8           CHAIR: Well, I'd make a motion for  
9 this time to have a vote that will enable me to move  
10 forward with promulgating the regulation.

11           MR. GREINER: This is Andy Greiner.  
12 I'd like to make a motion that we authorize Rick to  
13 move forward with conversations that would lead to a  
14 change in the regulations trying to get this  
15 loophole closed and whatever other edits need to be  
16 made to clean up prior issues that can be resolved  
17 easily.

18           CHAIR: Okay. Do I have a second to  
19 that?

20           MS. SLAYMAKER: This is Laura  
21 Slaymaker. I'll second.

22           CHAIR: Thank you, Laura. All in -  
23 all Board members in favor please say aye.

24 AYES RESPOND

25           CHAIR: Are there any Board members

1 that are opposed? Okay, thank you very much, folks.  
2 I know that was a lengthy dissertation there, but it  
3 was a necessary evil, and I appreciate you all  
4 hanging in there with us. We will now move forward  
5 with the administrative agenda. And that would be  
6 the claim summary with Amy Forbes-Witt.

7 MS. FORBES-WITT: Good morning,  
8 everyone. Going to report on the claim summary data  
9 and payment information for the calendar year to  
10 date. As of May 31st, 2023, we've had 69 new claims  
11 received and three reopening so far this year.  
12 Claims closed that were eligible for payments are 72  
13 and none were closed without a payment. There were  
14 11 denied claims thus far this year and ten claims  
15 that were withdrawn. Ninety-three (93) claims have  
16 been closed so far this year, and the total pending  
17 claim count has decreased to 812.

18 The dollars paid thus far relating to  
19 claims payments equals 12,613,700 - \$12,613,713.20.  
20 The cost per closed claim equates to \$262,213.71 on  
21 average. Regarding the TIIP program, there was one  
22 new TIIP claim received. No claims were closed, and  
23 we currently have four open TIIP claims. The  
24 reserves are set at 1,450,000 and we have not made  
25 any TIIP payments so far this year.

1                   That concludes the claims and payment  
2 information. Does anyone have any questions or  
3 comments on that area?

4                   MR. GREINER: Amy, this is Andy  
5 Greiner. I'm just - the 11 denials, were any of  
6 those because of registration issues?

7                   MS. FORBES-WITT: I believe most of  
8 them - Well, I do recall one being passed the 60-day  
9 mark. A lot of them are for the throughput fees and  
10 just, you know, the fees being current, not having  
11 that information. To my knowledge, there is nothing  
12 regarding the registration or solely the  
13 registration.

14                  CHAIR: Right.

15                  MS. FORBES-WITT: But yes - yeah, a  
16 lot of it is the throughput and capacity fees not  
17 being paid or not having that proof of that  
18 documentation, unfortunately.

19                  CHAIR: Okay. Does anybody else have  
20 any questions about the claims report? All right.  
21 Hearing none, I will move on to my portion, which  
22 will be the financial statement review.

23                         If you turn to page four of the  
24 review, I will start there. And I would also note,  
25 as I normally do, that, you know, comptroller runs

1 on a fiscal year as opposed to a calendar year. So  
2 these financials are for the first nine months of  
3 the fiscal year that started on July 1st. So these  
4 will run from July 1st through March 31st. You'll  
5 see in the revenues, we booked \$58,550,238. You can  
6 see that last year at this time we were about 26.9.  
7 If you look directly above that you'll see why.  
8 This is all related to our investments in the  
9 market. So last year at this time we were - we had -  
10 we were running a deficit in the market. This year  
11 we're actually running a positive. So that amounts  
12 for that big increase on the revenue line.

13                   If you look up above on the itemized  
14 fees, the gallon, tank capacity, and TIIP fees are  
15 all basically the same. I did see some numbers for  
16 April, and April is actually up about a million over  
17 last year. So it's indicative of folks getting out  
18 there and doing a lot of traveling. In regards to  
19 the expenditures, you'll see that we had  
20 administrative expenses totaling \$4,021,952. Claim  
21 payments during those first nine months were  
22 20,900,164. And funds released to DEP as a result  
23 of the grants that are authorized every December by  
24 you folks amounted to \$7,118,112, which brought the  
25 total expenditure line to \$32,046,018. You can see



1 last year, we basically run expenditures about the  
2 same. We're down roughly about two and a half  
3 million, which is not a bad thing. Revenues over  
4 expenditures, you'll see that we are in the plus.  
5 Our revenues exceed expenditures for the first nine  
6 months by \$26,504,220. As of March 31st the USTIF  
7 Fund balance was \$397,653,154.

8 Finally, if you will turn to page 11,  
9 this tracks our assets in relation to our actuarial  
10 claims liability, which is basically an estimate by  
11 our actuary. Monies needed for future claims.  
12 You'll see we are actually above. Our assets exceed  
13 our actuarial liability needed by \$99,508,871. Does  
14 anybody have any questions regarding the third  
15 quarter financials? Okay. Hearing none, we will  
16 move on to Troy Conrad and the Department of  
17 Environmental Protection program statistics.

18 MR. CONRAD: Good morning, folks. Can  
19 everyone hear me okay?

20 CHAIR: Yeah, Troy.

21 MR. CONRAD: Okay. So for those of  
22 you that I haven't met before, my name is Troy  
23 Conrad. I manage the Department's Bureau of  
24 Environmental Cleanup and Brownfields, which  
25 encompasses the Department's Storage Tank program.

1 I'm here today and in other meetings as the  
2 representative of Richard Negrin, who is the acting  
3 secretary for the Department of Environmental  
4 Protection.

5 Under Pollution Prevention grant  
6 program statistics, for the current fiscal year that  
7 began on July 1st, 2022, two grants have been  
8 approved for a total of \$9,750, and no additional  
9 applications are pending at this time. Since the  
10 program's inception in January of 1998, the  
11 Department has processed and approved 1,156 grants  
12 totaling over \$5.9 million. Are there any questions  
13 on the Pollution Prevention Grant program? Okay.

14 Rick, would you like me to move on to  
15 environmental cleanup?

16 CHAIR: Yes, please, Troy.

17 MR. CONRAD: Okay. Also for the  
18 current fiscal year DEP has expended \$1.331 million  
19 of the 3.4 million the Board has approved for the  
20 Environmental Cleanup program. DEP is currently  
21 working on 15 sites. These are formally regulated  
22 underground storage tank sites where the Department  
23 is using USTIF monies to work through the  
24 characterization and remediation of contamination of  
25 the sites, in some cases providing alternate

1 drinking water supplies and mitigating exposure  
2 through vapor intrusion and other pathways. Also,  
3 as part of the expenditure, the Department has  
4 reviewed and approved 80 heating oil reimbursements  
5 totaling \$324,000 and has six additional  
6 applications which are pending. Do I have any  
7 questions on the Environmental Cleanup program?

8 CHAIR: Okay. I don't hear any, Troy.  
9 Thank you.

10 MR. CONRAD: Thanks you, folks.

11 CHAIR: Okay. I just wanted to give  
12 the folks a quick update on the east of staffing  
13 update. I had mentioned in the March meeting that  
14 Sandy Frye, who had probably over 25, 26 years with  
15 the program area, officially retired on April 14th.  
16 Since that time we have been moving to fill that  
17 position. We posted that position internally for  
18 Commonwealth employees only at the beginning of May,  
19 and we did not have any responses. So we pivoted to  
20 going outside - what we call an external posting,  
21 which would be open to the general public. I came  
22 in that way. Amy came in that way. Teresa  
23 Isabella, who's on - on the USTIF staff came in that  
24 way. So it's not an uncommon practice. It actually  
25 gets some new blood moving around.

1                   So that external posting went up last  
2 Friday and it will close next Friday. Amy's been  
3 able to tell through her magic on LinkedIn somehow,  
4 I don't get it, but she's - she can tell that  
5 there's been three folks that have applied. We  
6 don't see names. We don't see resumes or anything  
7 like that. So that position is currently open, as I  
8 say, until next Friday. Then it will close. Human  
9 resources will then vet those applications and then  
10 eventually they will supply a list to us. I'm  
11 hoping, you know, before the end of June. At that  
12 point, Amy and I will take over and establish an  
13 interview panel. We already have questions  
14 developed. We have to ask everybody the same  
15 questions.

16                   So we are moving through that process.  
17 But that position is not filled. But we are  
18 currently actively pursuing another individual to  
19 join the USTIF team. And once that person comes on  
20 board, we will notify - notify you accordingly and  
21 make proper introductions.

22                   Last thing on the agenda would be the  
23 upcoming meeting dates. Next meeting for the third  
24 quarter will be September 21st. And then the final  
25 meeting of the year will be December 14th. As we

1 discussed previously, we're hoping the September  
2 meeting we will present to the Board the draft  
3 version of our proposed regulation change. And then  
4 as usual and customary in December we will have Aon  
5 come in and present their actuarial report  
6 presentation for the year. That concludes the  
7 slated business.

8 Any comments, questions from the  
9 membership, public? Okay. Hearing none, may I have  
10 a motion to end the Board meeting for today?

11 MR. GREINER: This is Andy Greiner.  
12 I'd like to make a motion that we adjourn.

13 MR. BUCKFELDER: Second the emotion.

14 CHAIR: Thank you, Bill. Okay, folks.  
15 That will do it for today. I appreciate the time.  
16 And I say once again, you know, if you have any  
17 questions regarding the Strom decision and our path  
18 moving forward, please reach out to myself or Pres  
19 and we will - we will gladly answer it -

20 MR. GREINER: Thank you.

21 CHAIR: - the best as we can. So  
22 thank you folks, and have a good summer.

23 \* \* \* \* \*

24 HEARING CONCLUDED AT 10:58 A.M.

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CERTIFICATE

I hereby certify that the foregoing proceedings,  
Chair Burgan was reported by me on June 8, 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 5th day of July, 2023.



Sophia Mahoney,  
Court Reporter