BEFORE THE STATE OF INDIANA
FINANCIAL ASSURANCE BOARD

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PUBLIC MEETING OF OCTOBER 24, 2024

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PROCEEDINGS

before the Indiana Financial Assurance Board, Nivas Vijay, Chairman, taken before me, Lindy L. Meyer, Jr., a Notary Public in and for the State of Indiana, County of Shelby, at the Indiana Government Center South, Conference Center, Room A, 402 West Washington Street, Indianapolis, Indiana, on Thursday, October 24, 2024 at 1:29 o'clock p.m.

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APPEARANCES:

BOARD MEMBERS:

Nivas Vijay, Chairman
Lauren Nielsen
Kevin Ryan
Tom Navarre
Mark Aldous

Brian Wolff, IDEM
(Nonvoting)

IDEM STAFF MEMBERS:

Hilary Aldred
Katie Blackburn
Billie Franklin
Nancy King
Kevin Bump
Karla Kindrick

PUBLIC SPEAKERS:

Christopher Braun

- - -

1:29 o'clock p.m.
October 24, 2024

- - -

CHAIRMAN VIJAY: So, I call the meeting to order. I think it's 1:30. All right. Welcome, Board members. Welcome to the -- I'm still figuring out how to introduce things here. I'll make this -- I'll figure it out about the third or fourth time. Luckily, Nancy gave me a cheat sheet.

So, welcome, Board members, including those in attendance and joining us remotely. I believe we do have a quorum. Two of the Board members are joining us remotely via Teams, so we will do a call to order, and also I'll ask the Board members to introduce themselves, starting with Lauren.

MS. NIELSEN: Lauren Nielsen. I represent environmental interests.

MS. KING: I'm Nancy King, Board Counsel.

CHAIRMAN VIJAY: Nivas Vijay, with Heartland Environmental, and I represent the environmental consulting industry.

MR. RYAN: I'm Kevin Ryan, retired CEO of National Institution. I guess I look at the numbers.

MR. WOLFF: Brian Wolff. I'm the Assistant Commissioner of the Office of Land Quality at IDEM.

CHAIRMAN VIJAY: And I think we have Mark and Tom via Teams.

So, Tom, I'll have you introduce yourself first.

MR. NAVARRE: Tom Navarre -- good afternoon. Tom Navarre, and I represent the convenience store industry.

CHAIRMAN VIJAY: And Mark.

MR. ALDOUS: Yes, good afternoon. Mark Aldous. I'm here for the property and casualty insurance industry.

CHAIRMAN VIJAY: Okay. So, then, verifying that we do have a quorum, so we're good there.

One of the items of business we'll get to today, the Board will be asked to readopt the ELTF Rules after the agency reports to the Board,

so if there is anyone who wishes to speak on the rules, fill out a card at the reception desk.

And where would that card be?

MS. KING: That would be right over there (indicated).

CHAIRMAN VIJAY: Right over there. So, if anyone does need to feel like speaking on the rules, you have to fill out that card, please.

And we'll go to the Fund Administrator's Report, with Hilary.

(Discussion off the record.)

MS. ALDRED: Good afternoon, Chairman and members of the Committee. My name is Hilary Aldred, and I am here to present the Fund Administrator's Report for Fiscal '24.

Out of the total budget of 31. -- 36.1 million, our total expenses for Fiscal '24 was 10.4 million, including 5.8 million in claim payments. The ending balance for Fiscal '24 was 212.2 million. As we discussed previously, we've updated the statement to show the interest earned in this legal fund, which for Fiscal '24

was 6.9 million dollars.

Here is a comprehensive overview for Fiscal '24 comparing monthly revenue and claim payouts. For Fiscal '24, the monthly revenue averaged 3.5 million from fuel inspection fees, and the average claim payout was 490,000 a month.

For the Aviation Fuel Account, as you recall, this was new for Fiscal '24. The Aviation Fuel Account received 876,000 for this fiscal year, the previous fiscal year averaging 97,000 -- or 79,000 a month.

And lastly, the Petroleum Trust Fund had an ending fund balance of 8.8 million.

Any questions?

(No response.)

MS. ALDRED: Thank you.

CHAIRMAN VIJAY: We move on to Katie, with the Financial Assurance Update.

MS. BLACKBURN: Good afternoon. My name is Katie Blackburn. I'm the Section Chief for the UST Operations Section, which houses the ELTF Fund.

Incidents reported and confirmed in Fiscal

Year '24, we had 139 total, and then 130 of those were confirmed. That is a little bit lower than previous years.

So far in Fiscal Year '25, we have had 59 incidents reported, 38 of those have been confirmed releases, so we're still working through -- the Petroleum Remediation Section is still working through those other ones.

For Corrective Action or LUST eligibilities received and approved, we have -- in Fiscal Year '24, we received 72, and of those, we approved 49 eligibility applications. Sixteen of those were admin denials, and typically for eligibilities, if it's an admin denial, the IFC hasn't been received yet by IDEM, so we just move that on. We had -- only had two that were deemed ineligible in Fiscal Year '24.

So far in Fiscal Year '25, we've received 26 of those eligibility applications. Six have been approved, and we're still working through the other ones. There's been one admin denial, so we have about 19 of those we're still working through.

For corrective action claims received in Fiscal Year '24, we received a total of 483 claims for just over 18 million dollars. You'll -- you may have noticed the increase in March. We had one incident that submitted almost six million dollars on its own. We had one claim -- excuse me -- one claim for that incident was over five million dollars, so that was the major uptick there.

And through September of this fiscal year, we have so far received 85 claims for almost 3.2 million.

Claims reviewed in Fiscal Year '24, we reviewed 482, with an amount reimbursed of 5.1 million. And again, that is less than the amount reviewed, but the common denials, as we've talked about before, are, you know, missing backup, labor classifications, reasonableness and cost effectiveness, and then some of those just rule denials for labor rates, mileage, equipment, that kind of stuff.

Fiscal Year to Date for Fiscal Year '25, we've received 68 claims so far, and we have

reimbursed just over $820,000.

We were asked about admin denials before, so for Fiscal Year '24, we did a dotal of 33 admin denials. Typically those are for incorrect form versions or there's a discrepancy, like the FID and the incident don't actually go together. We reach out, we maybe don't get the information back, so we do admin denials. And so far for Fiscal Year '25, we've had four.

For the 50 Percent Decommissioning & Replacement Program, this slide is the Fiscal Year '24 eligibilities received and approved. We received 207, and 188 were deemed eligible. Of those denials, the main reasons were either that the applicant was not the owner, or that the tanks didn't meet the age requirement. And this is Fiscal Year to Date '25. We've received 37. We've approved 30 so far.

This is the cost claims that were received for the 50 Percent Decommissioning & Replacement Program in Fiscal Year '24. It looks like it's calendar year, but we just didn't receive anything in the first few months of the fiscal

year, in calendar year '23. So, for Fiscal Year '24, we received 18 cost claims for just over 3.2 million.

MR. RYAN: The big one, the seven in June, just -- was it something like extraordinary or something?

MS. BLACKBURN: Yes. There was just larger costs. So far, the trend we've noticed is that if it's a decommissioning only, those tend to be significantly lower than the reinstallation claims.

MR. RYAN: Okay.

MS. BLACKBURN: So, if there was two or three reinstallation claims in June, then that would have bumped that up.

MR. RYAN: Thank you.

MS. BLACKBURN: And this is Fiscal Year to Date for '25. We did actually receive two like at the very, very end of September that didn't make it on here. So, this is claims that we reviewed for the 50 Percent Decommissioning & Replacement Program in Fiscal Year '24.

So, the amount reviewed is what could have

been submitted if this program was a hundred percent. The claim amount is the 50 percent that would be eligible for reimbursement, so the amount approved goes with the amount reviewed when you're looking at those numbers.

And then the claim amount goes with the amount reimbursed. So, of the 305,000 that we received in the claim amounts, we reimbursed 301,000. And then this is that same information for the first couple of months of Fiscal Year '25.

So far with this program, we have only had to do two administrative denials for cost claims, and both of those were because no closure report had been received by IDEM yet -- excuse me -- and that is one of the requirements.

This slide is the combined total based on the owner size that we have reimbursed so far. We combined Fiscal Year '24 and '25 because that money rolls over, so this gives a more accurate reflection of what's actually left in those owner groups.

This is just some information for the 50

Percent Program for Claim Submittals that would be helpful for our review process. We -- lump-sum invoices and incomplete backup is going to slow down the review times and delay people getting their reimbursement, so if we can get a breakdown of the charged costs for things like labor equipment and supplies, that'll be very beneficial to everybody.

And then that next point is just on your invoice summary, all invoice costs can be listed, but then in the column for requested costs, only put things that are eligible in that column.

Based on some feedback we have gotten from the work group that we -- we've had one meeting. We have another one scheduled next week. We are looking at doing some trainings on the nonrule policy document that was released earlier this year.

And on the 50 Percent Program for Claim Submittals, we're looking at doing that in 2025. So, if anyone has suggestions for what could be included in that, please let me know.

Any questions?

CHAIRMAN VIJAY: Katie, just a quick question on the -- it looks like in August of -- I'm sorry. It looks like in August '24, you had a decent amount -- a decent difference in the claim amount compared to the claim reimbursed on the 50 Percent.

MS. BLACKBURN: The 50 Percent.

CHAIRMAN VIJAY: Was that some anonymous claim that had resulted in denial?

MS. BLACKBURN: Let me get that. Yes, actually we had a reinstallation claim where we reached out to a subcontractor, a consultant reached out to the subcontractor, and they didn't really give us the breakdown that we needed, and the consultant actually asked that we just go ahead and deny those costs, because they were -- it was just being delayed, and so, they wanted to be able to take that denial to their subcontractor and say, "This is why we need this information."

CHAIRMAN VIJAY: That makes sense.

MS. BLACKBURN: Anything else?

(No response.)

MS. BLACKBURN: All right. Thank you for your time.

(Discussion off the record.)

CHAIRMAN VIJAY: Yes. So, we're going to move on to the Title 328 Readoption, and Billie Franklin is here to help explain that to us.

MS. FRANKLIN: Good afternoon. My name is Billie Franklin. I am the Rules Branch Section Chief, and I am -- today I am presenting Title 328 for readoption.

With the implementation of House Enrolled Act 1623, a rule now expires on January 1st of the fifth year after the year in which the rule took effect under Indiana Code 4-22-2.6. Due to elimination of exemptions in Indiana Code 4-22-2.5, there are no longer any rules in which -- that do not expire, also known as forever rules.

With that in mind, we have decided to readopt our rules as a whole package today -- I'm sorry -- a whole package to avoid having them expire as of January 1st, 2025. Readopting the

titles in their entirety will keep all of the rules on the same schedule for a readoption every five years, making it easier to ensure we do not have rules that inadvertently expire.

For Title 328, we have provided a 30-day comment period for this rule. The comment period for this readoption was for -- from August 21st, 2024 through September 20th, 2024. We received no comments.

We ask the Board to approve this readoption in its entirety without amendments so we don't run the risk of our agency rules expiring. I am happy to answer any questions you may have.

MR. RYAN: So moved. No questions here.

CHAIRMAN VIJAY: So, did anybody -- if anybody signed up to speak, I'll open the floor to them.

MS. KINDRICK: No, sir.

MR. BRAUN: Could I -- I didn't sign up.

MS. KINDRICK: Oh, Chris.

MR. BRAUN: Can I speak?

CHAIRMAN VIJAY: Absolutely.

MR. BRAUN: Chris Braun, on behalf of the Indiana Food and Fuel Association.

Just to support what Katie's talking about, we rise in support of readoption. And to give you some idea of the impact that these rules have had and that this Board approved is, if you remember back in 2016 when we had the ELTF audit done, we were running a deficit, and we were leveraged about 400 percent. We were underwater.

The average cost -- or the costs that were being paid out during that time period from 2013 to 2020 were over 300 million dollars, and we were averaging -- the high was in 2017. We were at north of 50 million dollars.

Last year, this fiscal year just ended June 30, the payout of claims is less than six million. The average over that seven-year period, 2013 to 2020, was thirty-seven and a half million.

Since these rules have been adopted that she's asking that you reinstate and approve

today, the average cost per year on these payouts is 7.7 million, so it's been a dramatic drop, in part, because of the stewardship demonstrated by this Board, as well as IDEM and the regulated community, and wanting to make sure the viability of the ELTF Fund remains.

And -- but I also want to alert you, as part of this rule adoption, that while we're sitting on a lot of money right now, over 200 million dollars, because of the rule changes that you approved previously that are captured in here, there will be temptations in the coming session come January for perhaps someone to raid the fund.

And I would encourage you to be vigilant about not allowing that, in part, because, as was demonstrated by the IDEM report just a minute ago, we're on the very tip or cusp of seeing the full impact of this Tank Decommissioning & Replacement Program, because while it became effective on July 1 of last year, just supply chain, paperwork and everything else, that's why you didn't see anything until January of this

year, the very first claims coming in.

There's going to be -- I don't want to say a tidal wave, but there's going to be a much more regular recurrence of very significant claims coming in, and you can see here, they approved 188 in the Decommission & Replacement Program. For a typical gas station, the average cost to decommission, replace and install a new system is about a half a million dollars.

So, you know, if you take 188 times a half a million dollars, that's 94 million dollars. IDEM's share of that through the ELTF Fund would be 47 million. That would be in addition to the six or seven million you're paying a year.

So, there's great cause for celebration, and I encourage you to embrace these rules and the balance, but understand, it's not permanent, that we anticipate it will start being drawn down in the coming year. So, if you get contacted, we would ask that you be vigilant about saying -- while we look flush -- because the other thing we're going to do is we're going to ask for an increase in the legislature.

Right now we're only allowed to pay out 20 million a year, but as you can see here, the market demand -- and this has been very well received. This is a great program, and the environmental consulting community, the tank suppliers, et cetera, are all working hard to upgrade these programs so that -- or systems -- so that we can be proactive in terms of environmental investigation and cleanup, and not reactive in having to pay a lot on the back end after a tank fails.

So, you know, with 188 already approved, and you've already heard there'll be more coming in this coming fiscal year, we need to increase the cap on this 20 million a year, with the lion's share of that going to tank owners, zero to twelve tank owners, which have been the ones most tapped into it, which is basically the mom-and-pops, who can't afford to go out and spend a half a million dollars on their own to replace these systems. But with IDEM and through ELTF, this program is really vital to them.

And so, we're going to ask -- again, you

may get questions about, "Well, if you're sitting on 200 million dollars, why do you need an increase above 20 million?" It's because the market demand is there, and we're now seeing -- and in fact, it's substantially oversubscribed. If all 188 of these came in at that, you're talking about a 47-million-dollar payout. We only have a 20-million-dollar authority, so we want to ask for an increase going forward.

So, a long-winded explanation as to why the IFFA rises in support of this, that you do approve this, and then also be mindful that you may be contacted in the coming weeks as we head into the next legislative session, and I just wanted to give you a heads-up on that.

MR. RYAN: Thank you.

MR. BRAUN: I'm happy to answer any questions anyone might have.

CHAIRMAN VIJAY: Well, thank you, Chris, for that clarification.

MR. BRAUN: Great. Thanks, Nivas.

CHAIRMAN VIJAY: Any other -- anybody else want to speak on the rule, on 328?

(No response.)

CHAIRMAN VIJAY: Is there anybody on the Board who wants to discuss?

(No response.)

CHAIRMAN VIJAY: Do I have a motion to readopt 328?

MR. RYAN: So moved.

CHAIRMAN VIJAY: And is there a second?

MS. NIELSEN: Aye.

CHAIRMAN VIJAY: I don't know if I'm allowed to second.

Okay. All opposed?

(No response.)

CHAIRMAN VIJAY: And then I believe the Title 328 Rules have been readopted.

MS. FRANKLIN: Thank you.

CHAIRMAN VIJAY: I see I'm running out of items.

MS. KING: I will just jump in there and say this is -- I cribbed this from the ERB, and it's like there's all kinds of Board members, and everybody's always wanting to make motions

and everything, and since we're a small, lean-and-mean machine today, we don't have that many, but it still works, and we're happy to have it done.

So, thank you.

CHAIRMAN VIJAY: And I think we'll move to Open Forum, if anyone wants to address the Board at this time.

(No response.)

CHAIRMAN VIJAY: This might be the shortest Board meeting I've been in.

(Laughter.)

MR. BRAUN: Well, the Chairman's cracking the whip.

CHAIRMAN VIJAY: We have a fine-tuned machine here.

MS. KING: Yes.

CHAIRMAN VIJAY: All right. Well, motion to adjourn?

MR. RYAN: So moved.

CHAIRMAN VIJAY: All in favor? I apologize. Normally I'd think this is going to be longer. I'm trying to drag it on like five

more minutes, but okay. This meeting is adjourned.

Thank you.

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Thereupon, the proceedings of October 24, 2024 were concluded at 1:52 o'clock p.m.

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CERTIFICATE

I, Lindy L. Meyer, Jr., the undersigned Court Reporter and Notary Public residing in the City of Shelbyville, Shelby County, Indiana, do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me on Thursday, October 24, 2024 in this matter and transcribed by me.

Lindy L. Meyer Jr.

Lindy L. Meyer, Jr.,
Notary Public in and
for the State of Indiana.

My Commission expires August 26, 2032.
Commission No. NP0690003

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