Summary
Financial Assurance Board
Indiana Government Center South
Conference Center Rooms 1 and 2
Indianapolis, Indiana
Thursday, March 8, 2018

1. CALL TO ORDER

Vice Chair Greg Cobb called the meeting to order at 1:31 p.m. A quorum was present.

Members present: Kim Forster, representing Environmental Interests; Tom Navarre, representing Convenience Stores; Greg Cobb, representing Independent Petroleum Wholesale Distribution/Marketing; Sanka Prasad, representing Environmental Consulting; Kim Logan, Proxy, State Treasurer's Office; and Amy E. Smith, Proxy, IDEM.

IDEM Staff Present: Nancy King, Board Counsel, Office of Legal Counsel (OLC); Kim Diller, Chief Financial Officer, Finance Division; Doug Louks, Branch Chief, Underground Storage Tanks (UST), Office of Land Quality (OLQ); and Dan Watts, Rule Writer, Rules Development Branch (RDB), OLC.

2. APPROVAL OF MEETING SUMMARY

Vice Chair Cobb called for approval of the August 10, 2017, meeting summary, which was approved as presented.

3. REPORTS

Financial Reports

Ms. Amy Smith, Deputy Assistant Commissioner, OLQ, explained since the 2016 release of two studies on the Excess Liability Trust by a third-party consulting firm, IDEM has concentrated their fund management endeavors on implementing the recommendations and informing the Board and UST owners and operators of the results. IDEM has revamped the required financial report under the UST statute and ELTF rule to ensure the data presented to the Board is better represented. She said the claims processing information will be presented by herself as IDEM's representative of the UST Branch, and the ELTF accounting and budget information will be presented by Ms. Kim Diller, IDEM's Chief Financial Officer. Ms. Smith explained the differences between the former tables of the claims processing section of the Financial Report and the new report. She stated that IDEM's focus is to reduce resubmittals by obtaining the necessary information and/or clarification of the claims submittals reducing the administrative paperwork.

Ms Kim Diller reviewed the ELTF Revenue/Expenses Fiscal Report and the ELTF Claims Revenue/Payouts Fiscal Report. She discussed the fund appropriation of $43.9 million with a 3% reserve of $1.3 million, which equals a beginning available budget of $42.6 million. She reviewed the total expenses which includes claims, personnel, and administrative support. She stated the reserve has been released and IDEM has submitted an augmentation to the budget agency for $10.5M. She described how revenues are trending along with payouts. She said revenues are less than payouts. Ms. Diller said to be able to forecast in future years, she would need to know what future obligations are.

Vice Chair Cobb asked why the revenue is down so much; Ms. Diller said she didn't know the reason because she is fairly new in the job, but that the revenue issue needs to be explored. Vice Chair Cobb suggested some of the issues are tax increases (diesel) and to enlighten legislators regarding this issue.

Mr. Navarre asked Ms. Diller what method she is considering to use to project future claims against future revenues. Ms. Diller suggested that when plans are initially submitted, knowing how much that incident is going to cost overall, to actually have a budget for that incident would help IDEM to know what we're going to end up paying over future years.

Mr. Navarre asked how that would happen, to which Ms. Smith replied that it's more of a claims processing issue and will be addressed in the UST Report.

Underground Storage Tank Branch Update

Doug Louks said he is now managing the ELTF Claims Section and the UST Branch so any questions can be directed to him. He stated that there will be an e-mail address in the future for questions and there will be an announcement when it is ready to be accessed. He said a new position has been created in the UST Branch. He said this person will be doing cost-effectiveness determinations under the rule 328 IAC 1-3-1.3. He said this will be for corrective action plans that come into the agency as well as performing pre-approvals. He spoke of two positions they will be filling, one being a claim reviewer. Mr. Louks said they had reduced the number of claims significantly by the end of January. He said they have been e-mailing letters based on application regarding contact information, so there will be instant notification when a final decision is made. He said the new ELTF Phase Application is now in effect for which two future additional outreach forums are planned, working to improve customer service, FAQ's published on IDEM's website, and working on electronic claim submittals. He said he would like to have a guidance published; his goal of increased efficiency allowing for faster reimbursements. He said dates for ELTF outreach sessions have been published. He spoke about the rule amendments. He did an audit recap. Other goals are to decrease costs associated with regulatory burden and to make Indiana competitive.

Vice Chair Cobb asked when they looked at the audits comparing Indiana to other states, were individual cleanup sites compared to Indiana sites—why is there a big difference. Mr. Louks said Indiana takes a more conservative approach than other states. He said Indiana is also one of the only functioning states without cost guidelines regarding cost effectiveness.

Mr. Prasad asked with the pre-approval process, if IDEM knows how much could be cut down on the spent time frame. Mr. Louks replied it should be faster, at least by half. Mr. Prasad then asked if there will be any budget change process. Mr. Louks said yes, a change order which we haven't developed yet, but that IDEM would do another preapproval.

Ms. Smith asked about the time line for the rule. Ms. King answered for final adoption of the rule, several steps are involved, including the 45-day review limit for the Attorney General's Office and Governor's Office of a 15-day deadline, which is approximately four months after final adoption.

4. RULEMAKING ACTION

LSA #15-231, Excess Liability Trust Fund

Vice Chair Cobb opened the hearing for final adoption of rules at 328 IAC 1, the Excess Liability Trust Fund (ELTF) Rule. Mr. Dan Watts, Rule Writer, Rules Development Branch (RDB), OLC, spoke for the agency. Mr. Watts said the rulemaking proposes to align the rule requirements with the statutory changes enacted by the Indiana General Assembly during the 2016 and 2017 legislative sessions. He said the statutory changes modified ELTF definitions, amended requirements for eligibility, claims, general eligible costs, payment and deductible limits, and clarified some statutory requirements and ELTF administrative procedures. Mr. Watts said the statutory changes caused some

inconsistencies between the ELTF statutes and the ELTF rules, which this rulemaking proposes to address. Mr. Watts said IDEM has proposed some rule changes since its preliminary adoption from comments received during the preliminary adoption hearing which he described. He said since IDEM received several comments regarding matters outside the proposed amendments, IDEM will address these additional amendments in a subsequent rulemaking.

There were no questions and no board discussion.

Commenter Christopher Braun spoke on behalf of the Indiana Petroleum Marketers and Convenience Store Association (IPCA) and said he was in support of the adoption of these changes. He said IPCA believed IDEM did an excellent job of tracking the legislative language and was responsive to comments from people after preliminary adoption. Mr. Braun suggested that the Board organize a task force to provide a report with some proposals at the next FAB meeting.

Commenter Om Narla, Golars Environmental, spoke about a third party previously doing all the claims and technical reviews before IDEM began doing all the claim and technical reviews internally. Mr. Narla said he believed reviews have been considerably delayed since then. He requested that the Board investigate the reason for rising costs.

The hearing was concluded.

Mr. Forster moved to adopt IDEM's suggested changes and Mr. Navarre seconded. By a voice vote, IDEM's suggested changes were adopted. Mr. Forster moved to final adopt the rule as amended, and Mr. Navarre seconded. By a roll call vote, the rule was final adopted unanimously.

5. OPEN FORUM

Commenter Christopher Braun spoke on behalf of the Indiana Petroleum Marketers and Convenience Store Association (IPCA). He commented about the negative state of claims payments affected by the 2017 legislative changes on taxes. Mr. Braun said we all need to adjust to the new reality. He commented that cleanup costs for Indiana are higher than surrounding states.

ADJOURNMENT

Vice Chair Cobb adjourned the meeting at 2:30 p.m.

DATE 8/9/2018 **SIGNATURE** _____

The summary is derived from Rules Development Branch staff members' notes. A typewritten transcript of the entire meeting is on file in the Office of Legal Counsel, Indiana Department of Environmental Management and will be made available on the IDEM rules website. To view approved summaries, you may go online to http://www.in.gov/dem/legal/2334.htm.