

STATE OF LOUISIANA  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
MOTOR FUELS UNDERGROUND STORAGE TANK TRUST  
FUND ADVISORY BOARD

The above-entitled meeting was held at the LDEQ, Galvez Building, Conference Center, 602 North 5th Street, Baton Rouge, Louisiana, beginning at 1:29 p.m., on August 21, 2014.

**BEFORE:**

Lori B. Overland  
Certified Court Reporter  
In and For the State of  
Louisiana

**ASSOCIATED REPORTERS, INC.**

(225) 216-2036

A P P E A R A N C E S

Keith Baker  
Chairman

Durwood Franklin  
Jeff Baker  
Gary Fulton  
Steve Burnham  
John Milazzo  
Grady Gaubert  
Cy Morin  
Karyn Andrews  
Shawn Ivey  
Jill Carter

Melissa Vizinat  
Kodi Brignac  
Jason Efferson  
Christy Gardner  
Heather Pettus  
Deidra Johnson  
Shawn King  
Frank Marcello  
Vince Sagnibene

\* \* \* \* \*

I N D E X

EXAMINATION:	PAGE(S) :
None	
EXHIBITS:	
None	
REPORTER'S PAGE	29
REPORTER'S CERTIFICATE	30

\* \* \* \* \*



1           Marketers.

2           MS. ANDREWS:

3                   Karyn Andrews, DEQ Financial Services  
4           Division.

5           MR. MORIN:

6                   Cy Morin, DEQ Audit Services.

7           MS. VIZINAT:

8                   Melissa Vizinat, Trust Fund.

9           MR. MARCELLO:

10                   I'm Frank Marcello with Louisiana Oil  
11           Marketers.

12           MS. GARDNER:

13                   Christy Gardner with SEMS.

14           MS. PETTUS:

15                   Heather Pettus with SEMS.

16           MS. JOHNSON:

17                   Deidra Johnson, LDEQ.

18           MR. SAGNIBENE:

19                   Vince Sagnibene, DEQ.

20           MR. KING:

21                   Shawn King, Jones Environmental.

22           MR. EFFERSON:

23                   Jason Efferson, DEQ Trust Fund.

24           MR. BRIGNAC:

25                   Kodi Brignac, DEQ Trust Fund.

1 MR. KEITH BAKER:

2 Thank you. I trust everybody has had  
3 an opportunity to review the minutes. Do we  
4 have any questions or comments?

5 (No response.)

6 MR. KEITH BAKER:

7 If not, then a motion to accept.

8 MR. BURNHAM:

9 Motion to accept the minutes.

10 MR. GAUBERT:

11 Second.

12 MR. KEITH BAKER:

13 Ms. Andrews, will you give us the  
14 financial report?

15 MR. ANDREWS:

16 Good afternoon. At the beginning of  
17 the year, we transferred, as you know,  
18 \$63,207,180.78 into the Trust Fund. That  
19 was at the beginning of fiscal year 2013.  
20 As of June 30th, 2014, we have deposited  
21 \$22,572,791.92. We've paid out  
22 reimbursements of \$11,101,603.46. Current  
23 liabilities on sites are at \$64,739,907.  
24 That leaves a balance after obligations of  
25 \$5,512,304.15.

1                   You can go ahead and turn the page.

2                   This is the information report for the  
3                   interest revenue from the Trust Fund.  
4                   Revenue collected inception to date is at  
5                   \$6,608,700.58. Expenditures to date are at  
6                   \$1,229,930.06. And expenditures in fiscal  
7                   year 2014 are at \$1,600.

8                   Go ahead and turn the page again.

9                   This report details how we calculate the  
10                  amount transferred from the motor fuel trust  
11                  fund to the environmental trust fund. It  
12                  details the revenues and expenditures. And  
13                  on this page, we'll note that the 2014  
14                  reimbursement to the environmental trust  
15                  fund is at \$4,321,158.09. This is an  
16                  increase from 2013, which we have discussed  
17                  already this year. And that is primarily  
18                  attributable to legal fees that have been  
19                  paid out this year.

20                  Does anybody have any questions?

21                  (No response.)

22                  MR. KEITH BAKER:

23                  All right. Thanks, Karyn.

24                  Cy, will you give us the auditor's  
25                  report?

1 MR. MORIN:

2 Yes, sir. We currently have 24 open  
3 audit cases. One of the 24 is being  
4 prepared for closure. 23 remain active.

5 One of the 23 audit cases has been  
6 opened in fiscal year '15. We plan to do 18  
7 this fiscal year.

8 14 of the 23 active audits were opened  
9 in fiscal year '14. Fieldwork has been  
10 completed for 11 of the 14, resulting in 9  
11 potentially clean audits with no assessments  
12 and two potential audit assessments,  
13 totaling approximately \$700.

14 These audits are currently in review  
15 process or were recently complete for  
16 review.

17 Fieldwork is still in progress on  
18 three remaining fiscal year '14 audits.

19 Four of the 23 active audits were  
20 opened in fiscal year '13. One of the four  
21 audits has been referred to legal for  
22 collection, as was discussed before. Legal  
23 is in the process of obtaining AG  
24 concurrence to file a petition to go forward  
25 with obtaining a judgment. And the amount

1 of the assessment in that case is \$4,016.58.

2 Fieldwork has been completed for three  
3 of the remaining four open fiscal year '13  
4 audits, resulting in one potentially clean  
5 audit with no assessment and two potential  
6 assessments, totaling approximately  
7 \$4,579.47. These audits are currently in  
8 the review process or was recently completed  
9 for review.

10 The four remaining active cases were  
11 opened in fiscal years prior to fiscal year  
12 '13 and remain in legal for collection. As  
13 I've mentioned in previous meetings, two of  
14 the cases, DEQ has obtained and signed and  
15 recorded judgments. One of these businesses  
16 has been closed. The owner has passed away.  
17 Because the owner signed a promissory note  
18 in this case as an individual and the  
19 judgment was awarded against an individual,  
20 DEQ's recourse is going to be to file a  
21 claim against the succession, which still  
22 has not been opened.

23 In the other case with the signed and  
24 recorded judgment, legal recently mailed a  
25 petition for garnishment.

1           The legal status of the other two  
2           audits opened prior to fiscal year has not  
3           changed since the last board meeting. The  
4           attorneys are working out ways around  
5           several legal obstacles, like bankruptcy  
6           discharge, revocation of their corporate  
7           charter, prescription, things like that.

8           In addition, eight audits cases have  
9           been finalized and closed since the previous  
10          meeting.

11          As I've discussed before, the total  
12          confirmed outstanding balance as of today of  
13          fees and penalties for the 23 active cases  
14          is at \$126,218.62. That is associated with  
15          the five legal cases, as we've discussed  
16          before.

17          In fiscal year '14, demand has been  
18          made for assessments totaling \$15,440.33 in  
19          delinquent fees and penalties. Credit was  
20          issued for \$912.72 in overpaid fees. To  
21          date, \$11,423.73 has been collected on these  
22          assessments. The remaining balance of  
23          \$4,016.58 is being pursued legally, as I've  
24          previously mentioned.

25          And finally, in fiscal year 2014, we

1 collected \$12,784.35 in fees and late  
2 penalties and \$172.90 in court cost.

3 Any questions?

4 MR. KEITH BAKER:

5 Questions?

6 (No response.)

7 MR. KEITH BAKER:

8 Jeff?

9 MR. JEFF BAKER:

10 Sure.

11 MR. KEITH BAKER:

12 Give us the status report.

13 MR. JEFF BAKER:

14 Good afternoon. Please refer to tab  
15 number five in your packets. These are the  
16 figures for the fourth quarter of fiscal  
17 year 2014.

18 During the fourth quarter of fiscal  
19 year 2014, the trust fund received 218  
20 applications, totaling \$2,617,215. 230  
21 applications were processed for payment  
22 during the fiscal quarter, totaling  
23 \$2,919,973. And 30 applications were  
24 returned with deficiencies.

25 For sites in the corrective action

1 phase, the outstanding liability for the  
2 corrective action plan budget and estimated  
3 costs to reach closure at the end of June  
4 2014 was \$32,447,961. The additional  
5 obligation recognized for the non-CAP sites  
6 plus the projected motor fuel trust fund to  
7 environmental trust fund transfers is  
8 \$31,930,224.

9 At the end of March 2014, the trust  
10 fund had 87 pending applications to process,  
11 which had requested amounts, totaling  
12 \$1,041,443. Of this amount, the estimated  
13 requested obligations relating to the CAP  
14 budgets and closure costs was \$679,721.

15 If you'll note the last page of your  
16 packet. The number of trust fund sites that  
17 received a no further action status thus far  
18 for the current fiscal year was 26. The  
19 number of potential trust fund sites that  
20 were reviewed and made eligible during the  
21 current fiscal year was 31 sites, which  
22 represented 34 active incidents.

23 Just some points of interest for the  
24 board. The trust fund staff have been  
25 reviewing our calculation methods for

1           determining the expenditure obligations  
2           against the fund. In our review, we have  
3           found some minor errors due to the way the  
4           payment data was stored historically. We've  
5           also found some emissions of potential  
6           liabilities for sites that have been made  
7           trust fund eligible that need to be  
8           determined and included in the calculation.  
9           We're currently working with our IT group to  
10          help us develop reports, addressing all of  
11          these issues. It is our hope that these new  
12          tools will be in place by the next board  
13          meeting and we will be able to present the  
14          revised and more accurate obligation  
15          numbers, starting in the first quarter of  
16          fiscal year 2015.

17                 Also, the trust fund has been  
18          continuing to work on the revised version of  
19          the trust fund guidance document. We have  
20          been in contact with several of the RACs,  
21          asking for feedback on some proposed  
22          changes. We will continue this effort and  
23          we'll keep the board apprized of our  
24          progress and any potential upcoming  
25          workgroups to address specific issues.

1                   Are there any questions?

2                   (No response.)

3                   MR. KEITH BAKER:

4                   All right. Thank you, Jeff.

5                   Ms. Carter, third party status claims.

6                   MS. CARTER:

7                   We do not have any new third party  
8                   status claims that have been -- or claims  
9                   that have been filed. And there's nothing  
10                  new with our current third party claims.

11                  MR. KEITH BAKER:

12                  Thank you.

13                  Do we have any other business?

14                  (No response.)

15                  MR. KEITH BAKER:

16                  I want everybody to note the tentative  
17                  dates for 2015.

18                  We happen to have a line on here for  
19                  old business. Deidra Johnson?

20                  MS. JOHNSON:

21                  I talked to Cy and Karyn and I'm not  
22                  sure if I'm the right person, because I  
23                  don't deal with the actual enforcement  
24                  actions. I deal with actually collecting  
25                  the amounts. The only thing I can tell you,

1           one of the new tools that we do have that's  
2           going to be available is working with the  
3           Office of Debt Recovery, where we're able to  
4           submit these debts over to the Office of  
5           Debt Recovery and then some of the things --  
6           the tools that they may use to cover the  
7           debt is, they have a (inaudible), they can  
8           get more assets out than we can. Because we  
9           can do garnishments. But if they don't have  
10          anything in the account that we try to  
11          garnish, then we can't get anything. But we  
12          do have judgments we file and we record  
13          those judgment so that gives us like a lien  
14          on their property in that parish.

15                 As far as when I read the minutes from  
16          last time, tagging them or being able to  
17          shut them down or something like that, that  
18          would deal with enforcement. And  
19          unfortunately, Perry's not here. Perry's  
20          the one that could probably deal with that,  
21          because he is the supervisor in enforcement.

22          MR. GAUBERT:

23                         Is that in reference to the audits?

24          MS. JOHNSON:

25                         Yes.

1 MR. MORIN:

2 Correct. Yes. And I can tell you, I  
3 went back to the statute, which is Title  
4 30:2195.37. There's a statement in here,  
5 failure to pay the fee in accordance with  
6 this section within 90 days after the due  
7 date shall constitute a violation and shall  
8 subject the person to applicable enforcement  
9 actions under the Louisiana Environmental  
10 Quality Act, including but not limited to  
11 revocation or suspension of the applicable  
12 permit, license, registration or variance.

13 I did speak to an attorney in the  
14 enforcement group and, you know, it does  
15 look like if we chose to, not that we have,  
16 we could go down the path of issuing a  
17 compliance order to compel them to get into  
18 compliance. We could possibly file --  
19 potentially file suit against them to get an  
20 injunction, you know, for them to halt  
21 business until they're in compliance.  
22 Whether we would want to go down that path  
23 or it may be -- you know, I can't speak to  
24 it very much. Like she said, Perry, you  
25 know, could give more information with the

1 details on that.

2 MS. JOHNSON:

3 And that decision will probably have  
4 to come with assistant secretary that's over  
5 that whole omnibus.

6 MR. MORIN:

7 Now, I will say this. The cases that  
8 I've talked about with the \$126,000, to my  
9 knowledge, those five businesses or no  
10 longer operating in that capacity at those  
11 facilities. They are no longer certificate  
12 holders at this point. So there would be no  
13 need to shut them down or -- you know, as  
14 far as that would go. But it's something  
15 that we should consider for the future in  
16 these cases and potentially doing something  
17 like that.

18 MR. KEITH BAKER:

19 Thank you.

20 MR. MORIN:

21 You're welcome.

22 MR. KEITH BAKER:

23 Any questions, guys?

24 MR. GAUBERT:

25 I'd like to ask Jeff one question on

1           the change in how you calculate the  
2           obligation, the new obligation format that  
3           he referenced a minute ago.

4                    What are the significant changes that  
5           those particular obligations -- you know,  
6           previously have not been included in the  
7           obligations and now they are potentially  
8           included in the obligations. What are the  
9           significant changes?

10          MR. JEFF BAKER:

11                   Well, there's a few. But the biggest  
12          one is most likely going to be, right now,  
13          we're making sites eligible. We're going and  
14          assigning them an eligibility when they make  
15          the request. But they have not been  
16          included in our calculations until they  
17          filed their first application. So we would  
18          have 50 to 60 sites that we made eligible in  
19          the last two years that could still  
20          potentially be submitting applications for  
21          us to process, but yet, because they haven't  
22          done it yet, we didn't include them in the  
23          calculations. So where we have all these  
24          other non-CAP sites, we have about 119 or  
25          120 non-CAP sites, they would be added to

1           that mix. So that's a big chunk of what  
2           we're looking at.

3           MR. GAUBERT:

4                     Is -- you know, historically, site by  
5           site when they met the previous criteria to  
6           be included into an obligated site, you  
7           know, as the -- is there a rule that allows  
8           -- they were in at a certain time, now,  
9           we're going to lump sum them into the trust  
10          fund all at one time. Where previously,  
11          they would only -- you know, piece by piece,  
12          they would be into -- come into the  
13          obligated site criteria. Now, it's a lump  
14          sum. And is that a one time event or will,  
15          you know -- and then from then on, those  
16          particular types of sites would be included  
17          from then on.

18          MR. JEFF BAKER:

19                     Yes, sir. Yes, sir. It would not be  
20          a one time event. We're looking at -- this  
21          calculation is done every -- actually every  
22          month, but we submit it to ya'll every  
23          quarter. And this would be a change in how  
24          we do the calculation. So these sites that  
25          were no -- that have not been included in

1           this obligation calculation would now start  
2           being included from this point forward.

3           MR. MILAZZO:

4                     So really, it's a one time event. I  
5           mean, the methodology is changing.

6           MR. JEFF BAKER:

7                     The methodology change is a one time  
8           event, yes. And from this point forward --

9           MR. MILAZZO:

10                    And so going forward, you'll do it  
11           consistently the same way.

12           MR. JEFF BAKER:

13                    Exactly.

14           MR. MILAZZO:

15                    So what we'll be seeing is this  
16           whatever hurdle it is, where we're going to  
17           see excess and the trust fund is going to be  
18           impacted, but it's a one time event. Going  
19           forward, you will consistently measure it  
20           the same way.

21           MR. JEFF BAKER:

22                    Yes, sir.

23           MR. MILAZZO:

24                    All right. And we don't know that  
25           now. That'll be maybe at the next meeting?

1 MR. JEFF BAKER:

2 Yes, sir. The next meeting we will be  
3 able to -- we're hoping to have the tools in  
4 place for us to provide reports to you and  
5 you'll be able to see exactly how the  
6 calculation is done and what the new amount  
7 would be.

8 MR. MILAZZO:

9 I'd like to go back to, you know,  
10 under the audits. And I think I had made  
11 some comments about this the last time, but  
12 -- so when -- when someone is out of  
13 compliance, when you find that there's --  
14 they're not following the protocol for  
15 whatever those fees should be on an ongoing  
16 basis, I mean, there is absolute followup.  
17 I mean, we don't have continuous violators  
18 out there. And if you discover that where,  
19 you know, let's say maybe it wasn't intent  
20 but maybe oversight, some cases it could be  
21 intent, would that be a person that would  
22 fall on your radar sooner than later to do  
23 an audit again?

24 MR. MORIN:

25 If it's --

1 MR. MILAZZO:

2 Because, you know, they -- they might  
3 think, well, you know, hey they just checked  
4 me, so maybe for the next couple of years,  
5 maybe I won't be such a good steward of the  
6 trust fund's money.

7 MR. MORIN:

8 I mean, yes, absolutely. If -- if  
9 we've had issue with someone in the past, it  
10 would definitely be on our radar, for sure.  
11 Now, we're not seeing too many cases where  
12 there's just non-reporters, you know, where  
13 they're not sending in a report with their  
14 fees every month. Our assessments currently  
15 are generally because, you know, maybe there  
16 was an error in calculation or an oversight  
17 of, you know, they should've included a fee  
18 on something and -- and it was overlooked or  
19 whatever.

20 But, yes, if -- if someone has had an  
21 issue in the past, we would definitely have  
22 them on our radar to potentially do again.

23 MR. MILAZZO:

24 And do you guys have some sort of  
25 maybe database or matrix where you're

1 looking at averages, you know, period over  
2 period then all of a sudden, you see someone  
3 either loss of business or misreporting or  
4 whatever, you begin to ask, you know, what -  
5 - why would this guy report 50 percent less  
6 than what he would typically report in a  
7 period. Is -- is there anything in the  
8 system that would flag someone?

9 MR. MORIN:

10 That -- you know, the information is  
11 in the system. I don't -- I do not  
12 currently have a tool that I use to look at  
13 it in that way. But that is a good -- you  
14 know, a good suggestion, a good --

15 MR. MILAZZO:

16 Yes.

17 MR. MORIN:

18 -- you know, idea of how we could look  
19 at it. And, you know --

20 MR. MILAZZO:

21 I'd like you to give some thought to  
22 that.

23 MR. MORIN:

24 Yes, yes.

25 MR. MILAZZO:

1           Certainly, there are ways that you  
2           could perhaps -- you know, they're violators  
3           whether it's intentional or not. But, you  
4           know, the fees are not getting where they  
5           need to be, which is important to all of us  
6           --

7           MR. MORIN:

8           Exactly.

9           MR. MILAZZO:

10           -- and the reason we're here.

11           MR. MORIN:

12           It is.

13           MR. MILAZZO:

14           And maybe there's -- there's some  
15           ability for you guys to maybe raise a flag  
16           in one place or another.

17           MR. MORIN:

18           Yes. I have realized recently we  
19           could use maybe some more tools in order to  
20           analyze that information more, so that'll be  
21           something we'll have to look into.

22           MR. MILAZZO:

23           That's all I've got.

24           MR. BURNHAM:

25           I've got a quick question. I'm not

1           going to address this to anybody in  
2           particular. If you just have any  
3           information on it, I'd appreciate it. But I  
4           haven't revisited the encore/tercore  
5           (phonetically spelled) thing in several  
6           years. And I was just wondering -- and this  
7           is really more global than just UST sites.  
8           We do it on every solid waste site where  
9           we're dealing with volatiles. But for the  
10          benefit of these guys who may not know what  
11          I'm talking about, we spend \$15 per kit,  
12          sampling kit, for every site we investigate.  
13          It winds up being several hundred dollars if  
14          not a thousand or so on a typical site that  
15          you're investigating. And by nature of the  
16          procedure that you use, you throw most of  
17          them away. The lab doesn't even analyze  
18          most of them but you have to use them. I'm  
19          not a big fan of them. I'm just wondering  
20          if anybody has done a study in the last few  
21          years to show the validity of the increased  
22          accuracy because of the use of tercores  
23          (phonetically spelled) and sampling in that  
24          manner or if that's something we can even  
25          look at or if it's something that's mandated

1 by the EPA if you're going to avail yourself  
2 of recap. I don't know. Can you help us  
3 with that?

4 MR. FRANKLIN:

5 Well, it's method 5035, which is under  
6 SWA 46, which is recommended practices by  
7 EPA. We do incorporate that method in the  
8 current recap and we're going -- and it's  
9 currently proposed to be in the revised  
10 recap also. So the use of it will continue  
11 because it is recommended by EPA. Some  
12 states have elected to follow it verbatim,  
13 as we have. And some have elected to just  
14 forego it and use the old method, so to  
15 speak --

16 MR. BURNHAM:

17 Right.

18 MR. FRANKLIN:

19 -- for that. But as far as any  
20 studies, I have not seen any studies. I  
21 have heard Florida did one, but I'm not -- I  
22 have not seen anything on that.

23 MR. BURNHAM:

24 Right.

25 MR. FRANKLIN:

1           But I do know that it is planned to be  
2           used, proposed to be used in the recap.

3           MR. BURNHAM:

4           Okay. It's just -- it's -- it's a lot  
5           of money.

6           MR. FRANKLIN:

7           Agreed. And we knew that when the --  
8           when the method was being implemented --

9           MR. BURNHAM:

10          Right.

11          MR. FRANKLIN:

12          -- that there was going to be a lot of  
13          unused encores which in turn cost money.

14          MR. BURNHAM:

15          Right. But you feel like we're going  
16          into it with eyes open, feeling like there  
17          may be enough benefit that -- which is  
18          adequate, I think, for their use. There may  
19          be enough benefit in getting more accurate  
20          samples that they're worth being spent.

21          MR. FRANKLIN:

22          We do. And also it's -- again, we're  
23          following the EPA recommended practices by  
24          doing so.

25          MR. BURNHAM:

1                   Got you. Thank you. I still don't  
2                   like it.

3                   MR. FRANKLIN:

4                   For the record.

5                   MR. BURNHAM:

6                   Yes, for the record.

7                   MR. KEITH BAKER:

8                   Any other questions or comments?

9                   (No response.)

10                  MR. KEITH BAKER:

11                  Can I have a motion to adjourn?

12                  MR. IVEY:

13                  Motion to adjourn.

14                  MR. BURNHAM:

15                  Second.

16                  MR. KEITH BAKER:

17                  Okay. Ya'll travel safe.

18                  **THE MEETING ADJOURNED AT 1:56 P.M.**

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*Sam Oulad*