LEAKING HEATING OIL TANKS PROGRAMS
Chapter 665 (2015 Acts of Assembly), Item 363

A Report to the Governor and the Chairmen of the House Appropriations and Senate Finance Committees

Virginia Department of Environmental Quality

November 30, 2015

I. Introduction

This report is prepared by the Department of Environmental Quality (DEQ) pursuant to paragraphs I.1 and I.2 of Item 363 of the state budget (Chapter 665, 2015 Acts of Assembly).

II. Background and Process

During the 2015 Session, the Budget Bill (Chapter 665, 2015 Acts of Assembly) included in Budget Item 363 a directive to DEQ to form a stakeholder working group to

> advise the Department regarding current guidance and policy governing the cleanup of petroleum releases. The review shall determine: a) if the Department's present guidance is being applied uniformly across regional offices, b) the adequacy of the Department's guidance with respect to the Commonwealth's groundwater protection regulations and the Department's technical regulations regarding petroleum spill remediation; and c) the appropriate deductibles for homeowners.

DEQ posted a notice on Virginia's Regulatory Town Hall in June 2015 seeking interested persons to participate on this representative stakeholder group, known as the "Leaking Heating Oil Tanks Cleanup Program Stakeholder Group." The members of the Leaking Heating Oil Tanks Cleanup Program Stakeholder Group (Stakeholder Group) included environmental consultants, representatives from trade groups, the real estate/banking/financial sector, state agencies, and private citizens. Members of the Stakeholder Group are listed in Attachment A.

The Stakeholder Group met on July 15, August 3, and September 3, 2015 to discuss current guidance and policy governing the cleanup of petroleum releases and review a) if the Department's present guidance is being applied uniformly across regional offices, b) the adequacy of the Department's guidance with respect to the Commonwealth's groundwater protection regulations and the Department's technical regulations regarding petroleum spill remediation; and c) the appropriate deductibles for homeowners.

Consensus was tested with respect to each recommendation proposed by the group, with the level of interest defined as follows:
3 – Strongly Support
2 – Some reservations, but can live with it and will not oppose it
1 – Serious concerns make it impossible to support and may actively oppose it

Consensus would be achieved so long as all members *present* indicated a level of interest of "2" or "3". No consensus would be reached if any one member expressed a level of interest of "1."

It is important to note that when convening a stakeholder group, assuring representation in equal numbers among varying interests can be a challenge. Moreover, it can be difficult for all members of the stakeholder group to attend all meetings of the group. Accordingly, the actual number of people responding in a particular way in a straw poll is less significant than the

overall view of whether consensus could be obtained and the concerns expressed about why consensus could not be achieved.

III. Virginia's Leaking Heating Oil Tanks Programs

Subtitle I of Resource Conservation and Recovery Act creating the Federal Underground Storage Tank (UST) Program was signed into Federal law in 1984. In 1987, the Virginia General Assembly enacted Articles 9 and 10 of the State Water Control Law (Va. Code §§ 62.1-44.34:8-12) which gave the DEQ general supervision of USTs, set financial responsibility requirements, and established the Virginia Petroleum Storage Tank Fund. Article 9 of the State Water Control Law also directed DEQ to promulgate regulations consistent with Federal requirements for USTs, including specific performance standards for tanks, spill prevention and leak detection requirements as well as specific requirements and standards for the cleanup and remediation of petroleum spills from USTs. The regulations implementing Article 9 and setting forth the UST Technical Standards and Corrective Action Requirements are set forth in 9 VAC 25-580-10 *et seq*. Article 9 defines an underground storage tank as "any one or combination of tanks, including connecting pipes, used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground connecting pipes, is ten percent or more beneath the surface of the ground."

Home heating oil tanks are specifically exempted from the definition of underground storage tank, and are thus unregulated and exempt from the requirements of Article 9 and its implementing regulations. Although not subject to the requirements for USTs as set forth in Article 9, home heating oil tanks are subject to any applicable building and fire codes. The discharge of oil into or upon (or reasonably expected to enter) state waters, lands or storm drains is prohibited under Article 11 of the State Water Control Law and any such discharges, including from a home heating oil tank, must be reported to DEQ and must be cleaned up as *deemed necessary* by the State Water Control Board. *See* Va. Code § 62.1-44.34:18. DEQ has developed guidance for evaluating potential environmental risks associated with petroleum releases to determine appropriate clean up requirements. *See* Storage Tank Program Technical Manual, DEQ Guidance Document # 01-2024D, Fourth Edition, May 10, 2011.

DEQ staff provided the Stakeholder Group with a presentation on the Statutory & Regulatory Framework: UST/LUST Program during the Group's July 15 meeting. Attachment B.

IV. Virginia Petroleum Storage Tank Fund

The General Assembly established the Virginia Petroleum Storage Tank Fund (Fund) in 1987 and provisions governing the Fund are set forth in Article 10 of the State Water Control Law. *See* Va. Code §§ 62.1-44.34:10 – 13. Article 10 provides that the Fund may be used for "(i) administering the state regulatory programs authorized by Articles 9, 10 and 11 (§ 62.1-44.34:8 et seq.) of this chapter, (ii) demonstrating financial responsibility, and (iii) other purposes as provided for by applicable provisions of state and federal law." Va. Code §§ 62.1-44.34:11. Revenue for the Fund comes from a fee of one fifth of one cent on each gallon of regulated petroleum product sold. The fee increases to three fifths of one cent when the Fund balance

falls, or is likely to fall, below $3 million. The Fund balance must exceed $12 million for the fee to fall back to one fifth of one cent. The fee is collected by the Department of Motor Vehicles and is transferred to DEQ monthly. Other sources of revenue for the Fund include fees for aboveground petroleum storage facility oil discharge contingency plans and penalties.

Disbursements from the Fund for cleanup costs associated with a leaking petroleum tank may be made for the reasonable and necessary costs incurred by the owner or responsible party subject to an applicable deductible. For Article 9 USTs the deductible may range from $5,000 - $50,000 as specified in statute. For home heating oil tanks, the current deductible is $500. *See* Va. Code §§ 62.1-44.34:11.

Currently, reimbursement demand exceeds revenue available for reimbursements, thus the Fund is in delayed payment status with claims awaiting payment an average of 256 days. The delayed payment balance as of June 30, 2015 is $15,117,635 consisting of 2,016 claims. Of those claims, there were 453 underground storage tank claims totaling $7,358,435 while home heating oil tank claims numbered 1,563 totaling $7,759,200.

DEQ staff provided the Stakeholder Group with a presentation regarding the Virginia Petroleum Storage Tank Fund: Revenue and Expenditures during the Group's July 15 meeting. Attachment B.

V. Recommendations of the Stakeholder Group

The Stakeholder Group was able to reach consensus on the following responses to each issue identified in paragraph I.1 of Item 363 of the Budget:

a) if the Department's present guidance is being applied uniformly across regional offices

Several reports suggest that some remediation decisions may have lacked uniformity due to the breadth of the current guidance. DEQ's managers have assured the group that they are aware of the issue and are taking measures to prevent anomalous decisions.

The group recommends that a working group of DEQ staff and consultants be formed to collaborate on technical issues related to risk assessments and improving communication between DEQ and consultants.

b) the adequacy of the Department's guidance with respect to the Commonwealth's groundwater protection regulations and the Department's technical regulations regarding petroleum spill remediation

Current guidance (Storage Tank Program Technical Manual DEQ Guidance Document #01-2024D, Fourth Edition, May 20, 2011), as written, is adequate with respect to the Commonwealth's groundwater protection regulations and the Department's technical regulations regarding petroleum spill remediation.

c) the appropriate deductibles for homeowners

It is the consensus of the stakeholder group that the deductible for reimbursement under the VPSTF should remain at $500.00 for home heating oil tank releases.

It is the consensus of the group that a significant increase in the deductible may have a detrimental impact on the proper management of leaking underground heating oil tanks as well as releases from aboveground tanks. Specifically, there may likely be a significant reduction in the ability and willingness of homeowners to handle the cost of these events and thus they may tend to be managed outside the normal channels and without proper regard to the environmental impact.

It is the consensus of the group that the VPSTF was established for the purpose of protecting the environment for all Virginians – tank owners and non-tank owners alike. Funds raised though the .006/gal fee should be retained for the purpose of executing the mission of the fund.

It is the consensus of the group that the current funding mechanism with the $500.00 deductible is working reasonably well. The fund accomplishes the goal for which it was established many years ago.

The group also reached consensus on the following statement:

The Virginia Petroleum Storage Tank Fund should only be used for the purposes in Article 10 of Chapter 3.1 of title 62.1 of the Code of Virginia.

Meeting Notes from each meeting are provided as Attachment C.

VI. Conclusion

Pursuant to the recommendation of the Stakeholder Group, DEQ will establish a work group, including DEQ staff and consultants, to collaborate on technical issues related to risk assessments associated with underground leaking petroleum tank remediation and on improving communication between DEQ and consultants.

Attachment A

Membership of the Leaking Heating Oil Tanks Cleanup Program Stakeholder Group

David B. Beahm, President, Central Virginia Soil Consulting, Inc.

John Butcher, retired, former Senior Assistant Attorney General

Keith H. Cannon, Marsh & McLennan Companies

Cindy L. Davis, C.B.O., Director, State Building Codes Office, Virginia Dept. of Housing and Community Development (Alternate- Skip Harper VA Dept. of Housing and Community Development)

John P. Diehl, CPG , ECC, Inc.

Lance Gregory, Environmental Health Coordinator, Office of Environmental Health, Virginia Department of Health

Anthony Moore, former Deputy Secretary of Natural Resources

Mike O'Connor, VA Petroleum, Convenience, and Grocery Assoc. (Alternate- George Peyton)

John S. Pollard, CPG, Pollard Environmental, LLC (Alternate- Garry Moore, Environmental Technology & Consulting, Inc.)

Penn Staples, Woodfin Heating Inc

Lindsay Trittipoe, President, NatLUST

DEQ Staff
James Golden, Director of Operations
Betty Lamp, Director, Office of Spill Response and Remediation

Attachment B

Presentation on the Statutory & Regulatory Framework: UST/LUST Program and Presentation on the Virginia Petroleum Storage Tank Fund: Revenue and Expenditures

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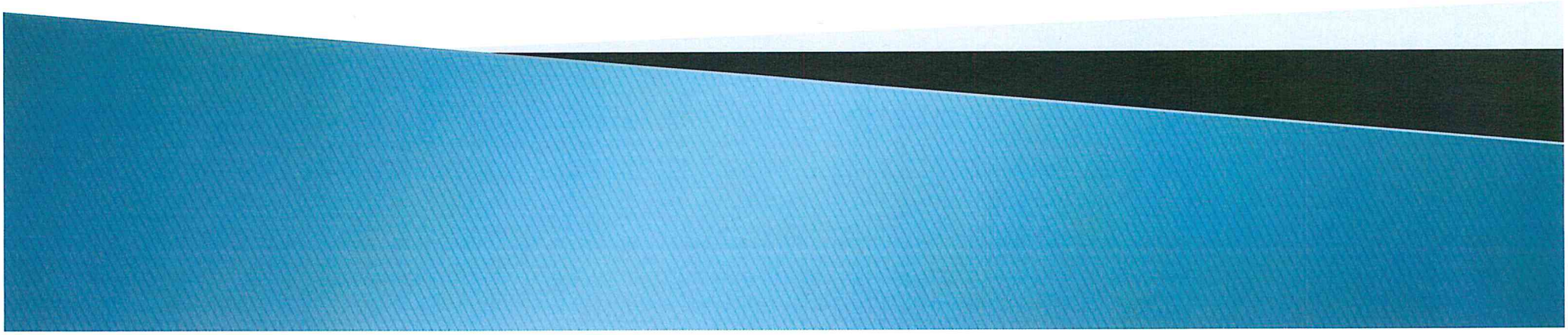
Statutory & Regulatory Framework

UST / LUST Program



Statutes (Laws)

Regulations

Guidance

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Laws of the Petroleum Program

- Article 9 - Storage Tanks
  (VA. Code § 62.1-44.34:8 and 9)
- Article 10 - Petroleum Storage Tank Fund
  (VA. Code § 62.1-44.34:10 through 13)
- Article 11 – Discharge of Oil into State Waters
  (VA. Code § 62.1-44.34:14 through 23)

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Article 9 of State Water Control Law

The Storage Tank Law (applies to USTs)

- Tasks DEQ with carrying out the provisions of this law
- Authority for UST regulations consistent with Federal requirements
- Requires corrective action following releases
- Defines "UST" (and importantly, what is exempt from definition)

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Article 10 of State Water Control Law

- Establishes the Virginia Petroleum Storage Tank Fund (Fund)
- Specifies Fund uses
- Establishes financial responsibility levels
- Establishes a fee for revenue for fund

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Article 11 of State Water Control Law

- Prohibits the discharge of oil
  - discharges must be reported
  - discharges must be cleaned up
- Authority for above ground storage tank (AST) facility regulations
- Requires oil discharge contingency plans
- Requires demonstration of financial responsibility for tank vessels and facilities

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Petroleum Facility Regulations

- UST Technical Standards and Corrective Action Requirements (9VAC25-580-10 *et seq.)*
- Petroleum UST Financial Responsibility Requirements – includes the Fund regulation (9VAC25-590-10 *et seq.)*
- Facility and Aboveground Storage Tank Regulation (9VAC25-91-10 *et seq.)*

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UST Technical Regulation

- Standards for UST systems
  - design
  - installation
  - operation
  - release detection
  - closure
- Requirements for:
  - release reporting
  - investigating suspected releases
  - corrective actions

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Definition of UST (from State Water Control Law, VA Code § 62.1-44.34:8)

- One or combination of tanks (including underground pipes)
- Volume of tank + piping > 10% below ground
- Contains an accumulation of regulated substances
  - Crude oil or fraction of...(i.e. petroleum products)
  - hazardous substances (in CERCLA list)

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Exempt Tanks

- Exempt from Article 9 (and thus the UST regulation)
- 9 types of tanks exempt from the definition contained in the law, including:
  - Farm/residential motor fuel tanks ≤ 1,100 gal
  - **Tanks containing heating oil which is used on the premises**
  - Septic tanks
  - Stormwater/wastewater collection systems

Heating oil tanks not subject to Article 9/UST Regulation

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Excluded USTs

- Subject to Article 9, but excluded from UST regulation
- 6 classes of excluded USTs, including:
  - USTs containing hazardous waste
  - Wastewater treatment tank subject to regulation under Clean Water Act
  - Machinery containing regulated substances for operational purposes (e.g. hydraulic lift tanks)

Tank Program Guidance

- Sets out program procedures
- Presents information on how to implement or interpret agency regulations

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Key Petroleum Program Guidance

- Storage Tank Compliance Manual
- Storage Tank Program Technical Manual
- Virginia Petroleum Storage Tank Fund Reimbursement Guidance Manual (Vols 1-5)
- Available to the public (DEQ and Virginia Town Hall web sites)

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Virginia Statewide Building & Fire Codes

- Contain requirements for proper installation, operation, and abandonment or removal of all petroleum storage tanks

- DEQ's Petroleum Storage Tank regulations, incorporated in the codes, apply only to DEQ-regulated storage tanks

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Article 9
(Regulated USTs)

Article 11
(All other petroleum storage tanks)

Building and Fire Codes

Authorizes Cleanup Regulations consistent with Federal Requirements

The Code specifies cleanup requirements; No applicable federal requirements

Guidance

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Contact Information

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Remediation Technical Support
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James.barnett@deq.virginia.gov

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Virginia Petroleum Storage Tank Fund

Revenue and Expenditures

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Fund Uses

- Administering petroleum regulatory programs
  - e.g., compliance inspections, reimbursements, state lead cleanups
- Demonstrating financial responsibility
- Other purposes as provided by state and federal law

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Fund Sources

- Fee of $0.002 (1/5th of one cent) per gallon on regulated petroleum products
- Fee increases to $0.006 (3/5^{ths} of one cent) when the FUND balance falls, or is likely to fall, below $3 million
- The FUND balance must exceed $12 million for the fee to fall back to $0.002
- Fee collected by DMV and transferred to DEQ monthly
- Other sources: AST registration fees and penalties

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Fund Net Gallons and Taxes

	Calendar Year 2013		Calendar Year 2014	
Fuel Types	Gallons	Fee	Gallons	Fee
All Non Heating Oil	5,386,941,093	$32,242,394.	5,606,461,806	$33,529,371.
Heating Oil	11,592,556	$69,213.	12,940,136	$77,170.
Total – All Fuels	5,398,533,649	$32,311,607.	5,619,401,942	$33,606,541.

Source: DMV Fuels Fee Comparison Report

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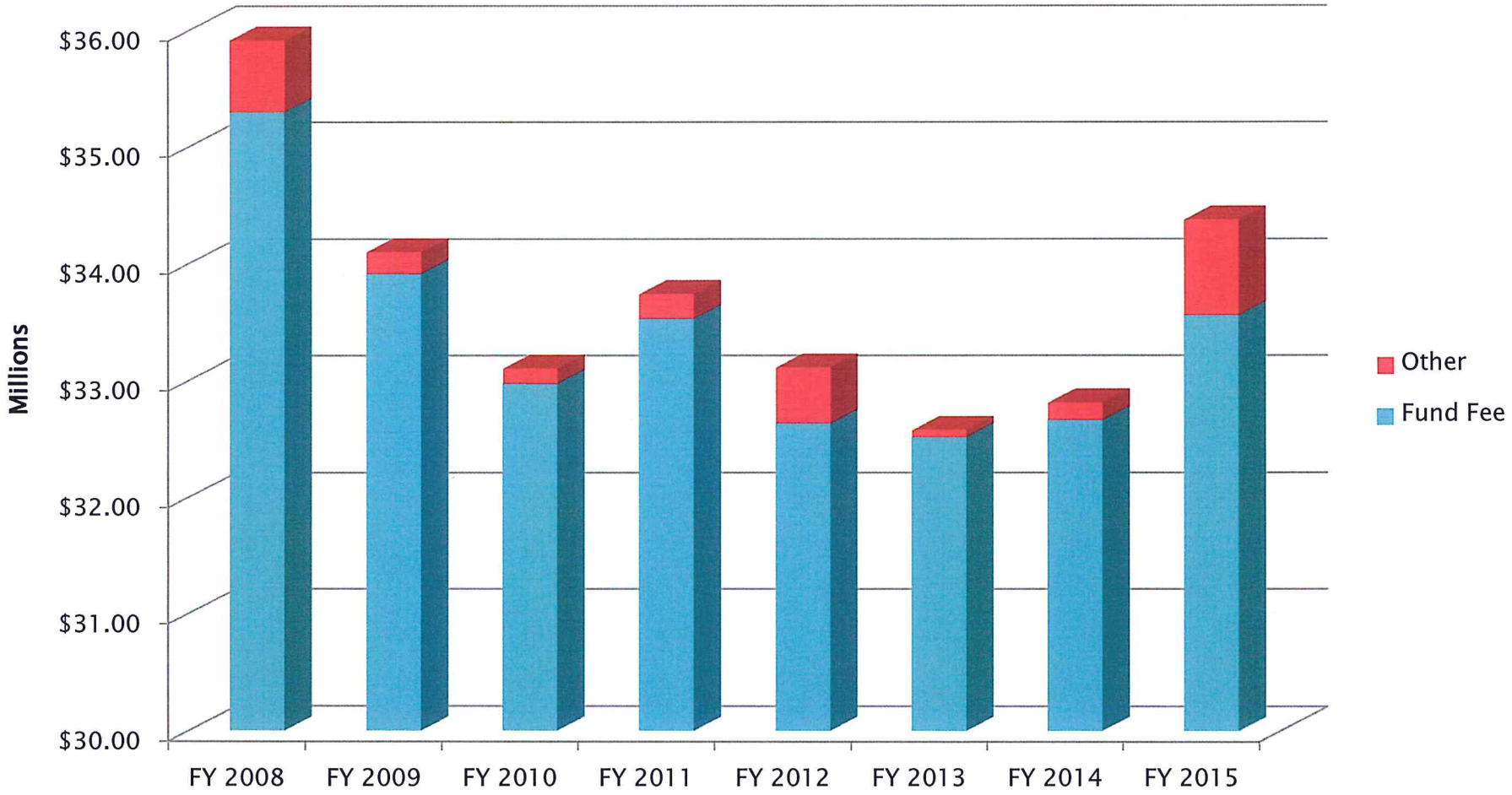
Fund Revenue Received



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Structure of Reimbursement

- Reimbursement of cleanup costs:
  - Regulated ASTs
  - Regulated USTs (also 3rd party claims)
  - Unregulated tanks (heating oil, residential motor fuel, farm tanks)
- Financial Responsibility (deductible)
  - $2,500 -$1 million: Regulated ASTs
  - $5,000 – $50,000: Regulated USTs
  - $500: Unregulated tanks

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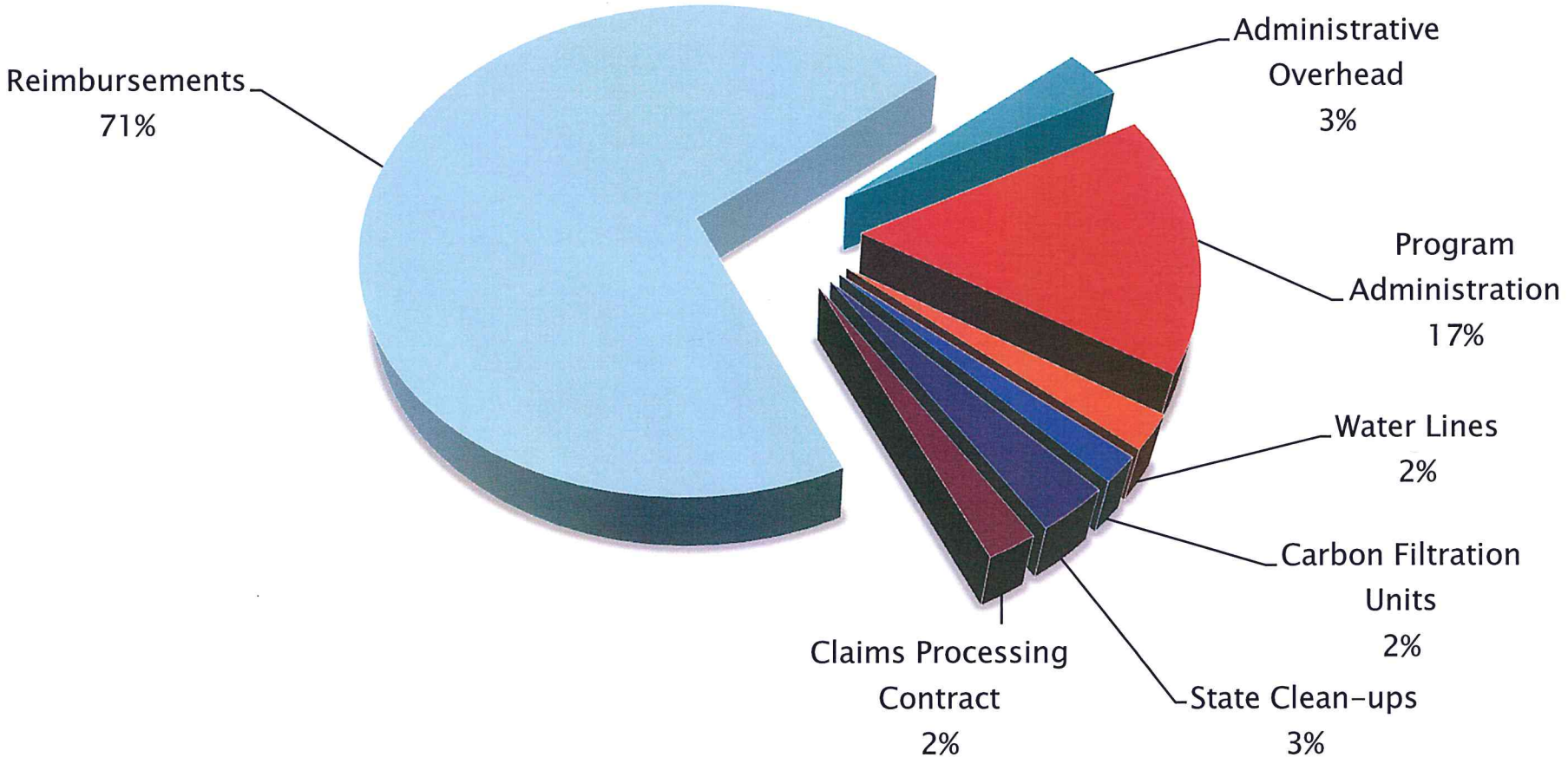
VPSTF Expenditures

FY 2015 (Preliminary)



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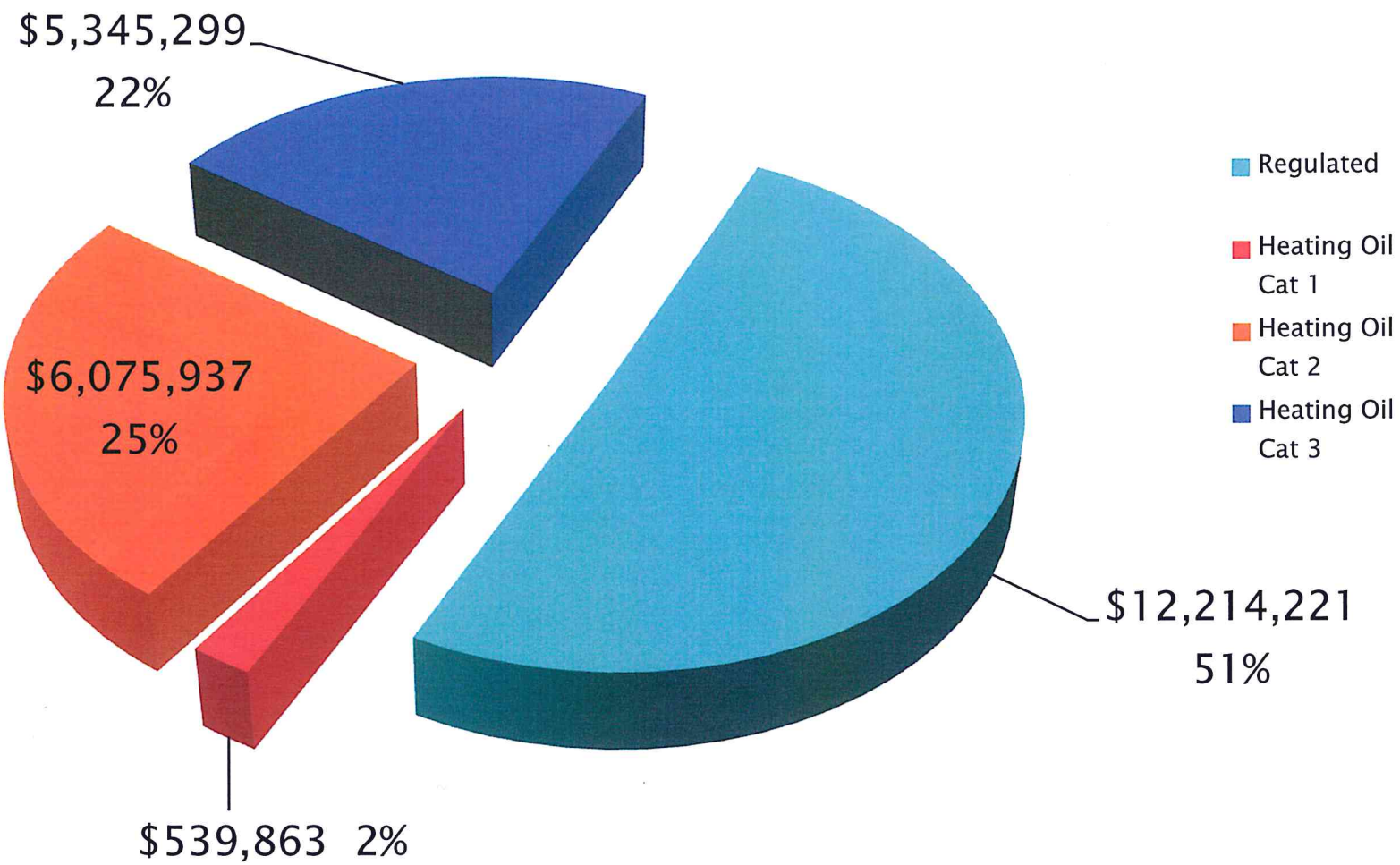
Reimbursements Paid by Release Type

FY 2015



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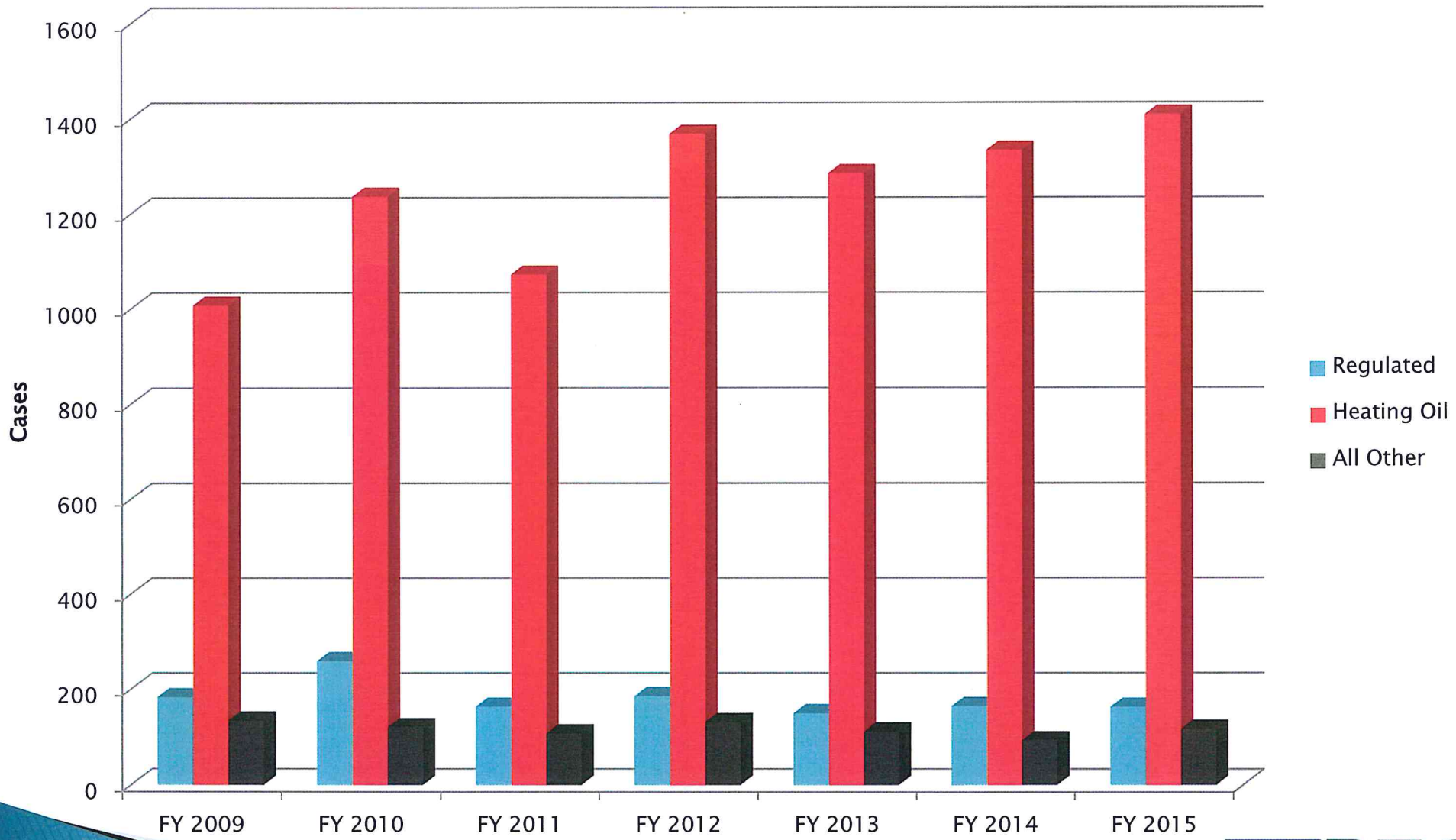
Releases



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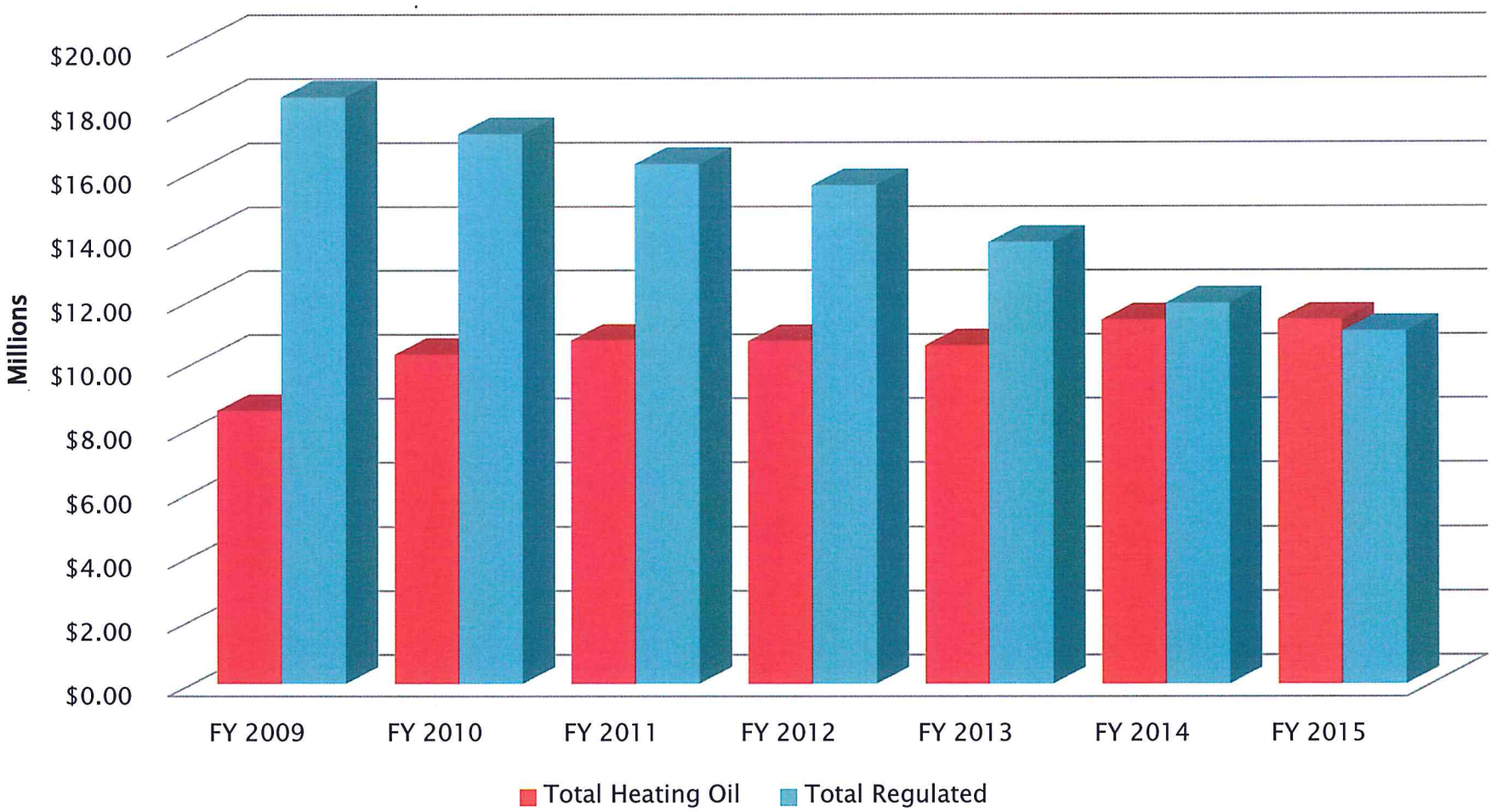
Value of Claims Processed

by Claim Type



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Delayed Payment

- Reimbursement demand exceeds available revenue
- In Delayed Payment when average days to pay a claim exceeds 30 days
- Current delayed payment began in FY 2009 (September 2008)
- Balance as of June 30, 2015: **$15,117,635.67** consisting of 2,016 claims
- Average Days to Pay as of June 30, 2015: 256 down from a high of 279

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Contact Information

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Attachment C

Notes from the Leaking Heating Oil Tanks Cleanup Program Stakeholder Group Meetings

LEAKING HEATING OIL TANKS CLEANUP PROGRAM
STAKEHOLDER GROUP MEETING

MEETING NOTES
STAKEHOLDER MEETING – JULY 15, 2015
DEQ CENTRAL OFFICE 2ND FLOOR CONFERENCE ROOM

Meeting Attendees

The following members of the stakeholder group attended the meeting:
John Butcher, Anthony Moore, Cindy Davis (only able to attend morning portion), David Beahm (arrived after meeting started), John Pollard, John Diehl, Keith Cannon, Lindsay Trittipoe, Mike O'Connor, Penn Staples, James Golden, and Betty Lamp. Lance Gregory was unable to attend the meeting.

Welcome and Introductions (Angie Jenkins):

Angie Jenkins, DEQ Policy Director, welcomed the stakeholders to the meeting and discussed some general meeting logistics and stakeholder meeting guidelines. Angie Jenkins will be serving as meeting facilitator for this stakeholder group. Melissa Porterfield took notes for the group. Ms. Jenkins asked for introductions from all stakeholders in attendance.

Ms. Jenkins noted that the General Assembly had directed DEQ to convene this group of stakeholders to advise the Department regarding current guidance and policy governing the cleanup of petroleum releases. The review will examine if the Department's current guidance is being applied uniformly across regional offices; the adequacy of the Department's guidance with respect to the Commonwealth's groundwater protection regulations and the Department's technical regulations regarding petroleum spill remediation; and the appropriate deductibles. Stakeholders were provided with a copy of an excerpt from the budget bill that directed the Department to form this workgroup.

Leaking Heating Oil Tanks Cleanup Program Overview
James Barnett presented information concerning the statutory and regulatory framework of the Underground Storage Tank (UST) program. He reviewed the requirements of Articles 9, 10, and 11 which set forth the statutory requirements for tanks and oil spills regulated under these articles. He also provided an overview of the guidance the agency has developed for the Petroleum Program. Agency guidance is available to the public through the DEQ website and the Virginia Regulatory Town Hall websites.

In addition to DEQ's regulations, tanks also are regulated by the statewide building and fire codes. The codes contain requirements for proper installation, operation, and abandonment or removal of all tanks storing flammable and combustible materials, including petroleum storage tanks. DEQ's UST and AST regulations are incorporated by reference into the building code, adding additional requirements for regulated tanks and facilities.

Marybeth Glaser presented information on the Virginia Petroleum Storage Tank Fund (Fund). She reviewed the purpose of the Fund, funding sources, and past Fund revenues and expenditures. She also explained delayed payments from the Fund.

Presentations will be distributed to the group after the meeting.

Objectives/Group Discussions (Angie Jenkins)

The General Assembly asked DEQ to examine the following:

- If guidance is being applied uniformly across regions
- Adequacy of guidance with respect to groundwater protection regulations and technical regulations for petroleum spill remediation
- Homeowner deductible

Ms. Jenkins asked the group for their thoughts concerning these topics.

Some stakeholders expressed concern that there was a lack of consistency concerning how different regional offices were operating the program in their region. One stakeholder stated they had heard that the Northern Virginia Regional Office had been given permission to deviate from the published guidance when conducting case closures for home heating oil tank cleanups. DEQ staff indicated that permission has not been granted to deviate from published guidance. DEQ requested stakeholders with concerns with guidance not being followed to provide specific details and data concerning those specific cases to DEQ central office staff so the details concerning these cases can be examined. Stakeholders stated the following issues with guidance not being applied uniformly:

- allowing contaminated soils to remain
- a thorough risk assessment not being performed
- not addressing free product (free product should not remain, investigate depth to product, check groundwater for contamination)

Much discussion took place surrounding the issue of closure of tank cleanup cases. The following are issues expressed by the members of the group:

- The applicability of the State Water Control Board's antidegradation policy (9VAC25-280-10) to tank cleanups.
- To what level does a site need to be remediated to in order to be eligible to be closed?
- What would be the impact on the Fund if case closure practices were changed?
- Product should always be removed from a leaking tank.
- Should the tank always be removed?
- Should there be more investigation to assess the risk posed by soils under the tank?
- Should angled borings be conducted or is it cheaper to remove the tank?
- Are environmental problems being caused by the current tank closure process? For example, are cases being re-opened to address contamination or are contaminated water supply wells being detected near closed heating oil tank cleanup cases.

- Are the risk-based cleanups appropriate, or should the agency require cleanups to meet groundwater standards, or should we be requiring cleanups to be below federal maximum contaminant levels (MCLs)? Should the Fund be used to pay for cleanups below MCLs?
- What does the law require concerning the remediation of these heating oil tank leaks?
- Should there be identical cleanup standards for heating oil tanks and Underground Storage Tanks (USTs?)
- Should groundwater be considered a receptor when establishing risk-based cleanup goals? If not, how is this consistent with the antidegradation regulation?

Ms. Jenkins reminded the group that the creation of a stakeholder group is the creation of a public body. All meetings of the group are public meetings. This means that any meeting among 3 or more members of the group where they will be discussing matters within the scope of the group must be noticed as a public meeting. There is a statutory requirement to announce all meetings on the Virginia Regulatory Town Hall website and Commonwealth Calendar. In addition to the statutory requirement, Executive Order 17 (2014) requires notices of meetings and agendas for public meetings to be posted on the Town Hall website 7 days in advance of a meeting, except in the case of an emergency meeting. Also, notice is to be included on the Department's web page. Ms. Jenkins also suggested to the group that any information that group members would like to share with the group should be sent to Melissa Porterfield to share with the group and the group should not use the "Reply All" function on e-mail as such e-mail correspondence and replies among group members may also constitute a meeting subject to public notice and other requirements.

Consensus item

Consensus was reached on one item at the meeting. The group reached consensus on the following: The Virginia Petroleum Storage Tank Fund should only be used for the purposes in Article 10 of Chapter 3.1 of title 62.1 of the Code of Virginia.

Action Items

The following information will be provided to stakeholders by DEQ:

- Copy of the presentations from today's meeting concerning the tank program
- A link to the antidegredation language mentioned by stakeholders at today's meeting
- A link to the DEQ draft guidance concerning heating oil tanks that was discussed with stakeholders at a meeting in November 2014 and the related presentation on the draft guidance.

The group requested that the following information be provided, if available:

- Information on the number of unregistered heating oil tanks (DEQ does not have this information since heating oil tanks (for consumption on the premises where stored) are not regulated by DEQ and thus not required to be registered - a trade association may be able to provide this estimate)
- Data on homeowner deductibles and demographic information on those heating oil tank owners impacted
- Information on how the tax collected by DMV that is used as the funding source was broken out by the type of fuel, specifically how they distinguish between heating oil and off-road diesel

(DEQ does not have this information- information on funds collected is reported to DEQ from DMV)

- Information (specifically requested for NVRO) on number of closures occurring and their associated parts per million (ppm) of contamination remaining, and what level of closure is occurring.
- Any analysis of the impact on raising homeowner deductibles, including how those unable to pay the deductible would be handled, an analysis of the marketplace, e.g. the impact a higher deductible would have on the identification of leaking tanks (would they continue to be identified or would they just be left in place?)

Meeting Adjourned

The meeting was adjourned at 4:05 PM.

Next Stakeholder Meeting

The next meeting of the Leaking Heating Oil Tank Cleanup Program Stakeholder group is scheduled to begin at 10:00 am on August 3, 2015 in DEQ's Central Office (2nd floor).

LEAKING HEATING OIL TANKS CLEANUP PROGRAM
STAKEHOLDER GROUP MEETING

MEETING NOTES
STAKEHOLDER MEETING – AUGUST 3, 2015
DEQ CENTRAL OFFICE 2ND FLOOR CONFERENCE ROOM

Meeting Attendees

The following members of the stakeholder group attended the meeting:
Lindsay Trittipoe; Penn Staples; Cindy Davis, David Beahm, - Garry Moore - alternate for John Pollard, John Butcher, John Diehl, George Peyton- alternate for Mike O'Connor, Lance Gregory; James Golden, Betty Lamp, and Anthony Moore (arrived after the meeting started). Keith Cannon was unable to attend the meeting.

Welcome and Introductions (Angie Jenkins):

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Guidance and Regional Consistency Overview
James Golden, DEQ Director of Operations, presented information to the group concerning the role of guidance in regulatory programs. Guidance is not law or regulation. Guidance may include specific requirements or may have options listed that program staff can use depending on the specifics of the case. He discussed how central office communicates with regional staff and central office receives data from regions concerning cases. This interaction helps to maintain consistency throughout the program. During his presentation he used the analogy of guidance being similar to guardrails on a roadway. The guidance is intended to allow some professional judgment to be used when evaluating cases. There are numerous differences that need to be considered when evaluating the risk a leaking tank may pose to human health and the environment. Mr. Golden presented a hypothetical case concerning removal of an unregulated home heating oil tank and how five DEQ regional offices indicated they would respond to the case. Some regions would classify the case as a category 1 site and require additional soil sampling and/or well samples and others would classify the site as a category 2 immediately. He indicated that the responses received from regional offices were all within the parameters of the current

guidance or "between the guardrails". Included in Mr. Golden's presentation were statistics concerning remediation case reopeners (i.e. how many closed cases are then later re-opened for additional evaluation or clean-up. The data show that approximately 0.8% of over 20,000 home heating oil tank cleanups are reopened later compared to 1.8% for federally regulated tanks.

Group Discussions (Angie Jenkins)

Much discussion took place surrounding the issue of tank cleanup cases. The following are issues expressed by the members of the group:

- Should all tanks be treated the same?
- How do you assess the risk?
- Is free product impact to groundwater always a problem?
- If saturated soils are present, should you assess impacts to groundwater?
- Should home heating oil tanks be regulated?

Is guidance being applied uniformly across regions?

The group attempted to reach consensus concerning the first item posed to the group from the Virginia General Assembly- Is guidance being applied uniformly across regions? There was a difference of opinion concerning the answer to this question among stakeholders and no consensus was reached on this issue. The following represents the various views from stakeholders concerning the answer to this question:

- The answer to the question should be yes or no.
- The answer provided should be more than a yes or no answer. It should provide an explanation of the answer to the question.
- The answer is "no" - DEQ is not applying guidance uniformly.
- The answer is "no" since all 5 DEQ regions presented with a hypothetical situation did not use the exact "uniform" process and place the cleanup in the same category (either all category 1 or category 2).
- The answer is "yes" since all 5 DEQ regions presented with a hypothetical situation did provide answers that were within the parameters of the guidance. (stayed within the guardrails)

The group tried to reach consensus on this issue and members provided the following statements (and variations of these statements) when attempting to answer the first issue concerning whether guidance is being applied uniformly among regions.

- DEQ has acknowledged that some regional personnel in some regional offices have taken a more liberal interpretation of the agency's guidelines in approving closures for releases of petroleum from home heating oil tanks than some other regional offices. DEQ reports that it is continuing efforts to ensure consistency.
- No, DEQ is not applying the department's present guidance uniformly across regional offices.
- No, the present guidance is not being applied uniformly. DEQ has acknowledged that regional offices apply heating oil guidance with different levels of implementation when acting on assessment/remediation of leaking heating oil tanks.
- The question of whether or not the guidance is being applied uniformly is not an easy one. DEQ has acknowledged that regional offices apply heating oil guidance with different levels of implementation when acting on assessment/remediation of leaking heating oil tanks.

- Determining whether the present guidance is applied uniformly is difficult due to the latitude allowed in the guidance. DEQ has acknowledged that regional offices apply heating oil guidance with different levels of implementation when acting on assessment/remediation of leaking heating oil tanks.
- No, present guidance allows regional offices to exercise professional judgment, which by its nature allows different outcomes. DEQ has acknowledged that regional offices apply heating oil guidance with different levels of implementation when acting on assessment/remediation of leaking heating oil tanks.

The group failed to reach consensus on whether guidance is being applied uniformly across regional offices. The meaning of the word "uniformly" generated discussion among members. Some stakeholders believe that the term "uniformly" would mean that regional staff when presented with specific information would always arrive at the exact same conclusion. Others interpreted this term to mean that as long as the regional staff made decisions consistent with the guidance, that the guidance was being applied "uniformly" across the state. No consensus was reached as to the meaning of the word "uniformly".

Adequacy of the Department's guidance with respect to the Commonwealth's groundwater protection regulations and the Department's technical regulations regarding petroleum spill remediation

The group discussed the current guidance. The following statements were made during the discussion:

- DEQ guidance suggests that groundwater is not always a receptor, but is described as a potential medium to receptors and it was suggested that groundwater should always be considered a receptor.
- How much contamination is okay to remain?
- Concern was expressed with respect to potential contamination of shallow aquifers from home heating oil tanks then leading to surface water contamination
- Suggestion to always require the owner to remove the leaking home heating oil tanks
- Should you allow the site to be closed without removing all contamination?
- Should home heating oil tanks be regulated tanks?
- If home heating oil tanks are not regulated tanks and the group is not going to suggest regulation of these tanks, then perhaps the focus of the group should be on whether the guidance is adequate with respect to the technical regulations.

The group did not come to any conclusion or consensus concerning the adequacy of the Department's guidance with respect to the Commonwealth's groundwater protection regulations and the Department's technical regulations regarding petroleum spill remediation.

Tank Data Spreadsheet

At the July 15th meeting, stakeholders inquired about the availability of data concerning heating oil tank case closures by DEQ's Northern Regional Office. DEQ staff provided the group with a spreadsheet containing information on closed cases in the Northern Virginia Regional Office. Due to the large amount of data provided, the group decided to review the information after the meeting and to send any questions about specific cases to Ms. Porterfield well in advance of the September 3rd meeting so that DEQ staff could pull the case files and be prepared to discuss specific cases at the September 3rd meeting.

Map of Heating Oil Cases/ Income demographics

As a follow-up to a request from stakeholders during the July 15th meeting, DEQ staff provided stakeholders with a map that illustrates the number of heating oil tanks closed, by county with corresponding poverty rate information. The poverty rate was obtained through U.S. census data.

Action Items

At the suggestion of one of the stakeholders, stakeholders were asked to provide suggestions for specific changes to the current guidance and submit those ideas to Ms. Porterfield well in advance of the September 3rd meeting. Ms. Porterfield was asked to then compile a list of all such proposals and distribute the list to stakeholders prior to the September 3rd meeting.

Stakeholders are also to send any questions about specific cases from the tank data spreadsheet for the Northern Regional Office to Ms. Porterfield well in advance of the September 3rd meeting so that DEQ staff can be prepared to discuss specific cases at the September 3rd meeting.

Ms. Jenkins reminded the group that September 3rd is the group's last meeting date.

Meeting Adjourned

The meeting was adjourned at 4:30 PM.

Next Stakeholder Meeting

The next meeting of the Leaking Heating Oil Tank Cleanup Program Stakeholder group is scheduled to begin at 10:00 am on September 3, 2015 in DEQ's Central Office (2nd floor).

LEAKING HEATING OIL TANKS CLEANUP PROGRAM
STAKEHOLDER GROUP MEETING

MEETING NOTES
STAKEHOLDER MEETING – SEPTEMBER 3, 2015
DEQ CENTRAL OFFICE 2ND FLOOR CONFERENCE ROOM

Meeting Attendees

The following members of the stakeholder group attended the meeting:
Lindsay Trittipoe; Penn Staples; Cindy Davis; David Beahm; John Pollard; John Butcher; John Diehl; Mike O'Connor; Lance Gregory; James Golden; Betty Lamp; Keith Cannon; and Anthony Moore.

Welcome and Introductions (Angie Jenkins):

Angie Jenkins, DEQ Policy Director, welcomed the stakeholders to the meeting and discussed some general meeting logistics and stakeholder meeting guidelines. Angie Jenkins has been serving as meeting facilitator for this stakeholder group. Melissa Porterfield took notes for the group. Ms. Jenkins asked for introductions from all stakeholders in attendance. This is the third and final meeting of the stakeholder group.

Ms. Jenkins noted that the General Assembly had directed DEQ to convene this group of stakeholders to advise the Department regarding current guidance and policy governing the cleanup of petroleum releases. The General Assembly directed that the review examine if the Department's current guidance is being applied uniformly across regional offices; the adequacy of the Department's guidance with respect to the Commonwealth's groundwater protection regulations and the Department's technical regulations regarding petroleum spill remediation; and the appropriate deductibles.

At the first meeting on July 15th, consensus was reached on the following statement:
The Virginia Petroleum Storage Tank Fund should only be used for the purposes in Article 10 of Chapter 3.1 of title 62.1 of the Code of Virginia.

Group Discussions (Angie Jenkins)

<u>The appropriate deductable for homeowners</u>
The group discussed the appropriate deductible and reached consensus on the following:

It is the consensus of the stakeholder group that the deductible for reimbursement under the VPSTF should remain at $500.00 for home heating oil tank releases.

It is the consensus of the group that a significant increase in the deductible may have a detrimental impact on the proper management of leaking underground heating oil tanks as well as releases from aboveground tanks. Specifically, there may likely be a significant reduction in the ability and

willingness of homeowners to handle the cost of these events and thus they may tend to be managed outside the normal channels and without proper regard to the environmental impact.

It is the consensus of the group that the VPSTF was established for the purpose of protecting the environment for all Virginians – tank owners and non-tank owners alike. Funds raised though the .006/gal fee should be retained for the purpose of executing the mission of the fund.

It is the consensus of the group that the current funding mechanism with the $500.00 deductible is working reasonably well. The fund accomplishes the goal for which it was established many years ago.

Adequacy of the Department's guidance with respect to the Commonwealth's groundwater protection regulations and the Department's technical regulations regarding petroleum spill remediation
The group discussed this topic and reached consensus on the following:

Current guidance (Storage Tank Program Technical Manual DEQ Guidance Document #01-2024D, Fourth Edition, May 20, 2011), as written, is adequate with respect to the Commonwealth's groundwater protection regulations and the Department's technical regulations regarding petroleum spill remediation

Is guidance being applied uniformly across regions?
The group discussed this topic and reached consensus on the following:

Several reports suggest that some remediation decisions may have lacked uniformity due to the breadth of the current guidance. DEQ's managers have assured the group that they are aware of the issue and are taking measures to prevent anomalous decisions.

The group recommends that a working group of DEQ staff and consultants be formed to collaborate on technical issues related to risk assessments and improving communication between DEQ and consultants.

Process Going Forward (Angie Jenkins)
DEQ will prepare a draft report by the mid to the end of October 2015. The draft report will be distributed to the stakeholder group for comments. This is a DEQ report; however, the agency does value the feedback of the stakeholder group. The final report is due to be submitted to the Chairmen of the House Appropriations and Senate Finance Committees by November 30, 2015.

Meeting Adjourned

The meeting was adjourned at 2:58PM.