TITLE: Petroleum Underground Storage Tank Release Compensation Board Collections Policy

AUTHORITY: O.R.C. §3737.91 Petroleum Underground Storage Tank Financial Assurance Fund
O.A.C. 3737-1-04 Annual Petroleum Underground Storage Tank Financial Assurance Fee, Certification of Compliance, and Financial Responsibility
O.R.C. §131.02 Collecting Amounts Due to State
O.R.C. §109.08 Special Counsel to Collect Claims

PURPOSE
Establishing and adhering to a formal policy for certification of delinquent invoices to the Ohio Attorney General's Office is critical to improve collection of outstanding balances and to enhance the information available in determining the estimate of the allowance for doubtful accounts at year end. This policy is adopted by the Board to provide a collection process for aging and delinquent accounts.

An aging account is an account on which Financial Assurance Fund fees have been invoiced to a responsible person. After the invoice has been sent to the responsible person, the amount of time between the mailing of the invoice and payment to the Fund is referred to as age.

A past due account is considered a delinquent account, unless disputed, after sixty (60) days from the date payment was due.

IN-HOUSE COLLECTION PROCESS
Annual per-tank fees are assessed in late April of each calendar year. During the year, additional fee assessments, including transfer fees, are issued as information becomes available to the Board's staff. Responsible persons who fail to remit the assessed fees by the later of July 1 or thirty (30) days from the mailing of the invoice are issued a Notice of Noncompliance in accordance with O.R.C. §3737.91. If, within thirty (30) days after the notification, the responsible person fails to pay the assessed fees, an Order Pursuant to Law is issued to the responsible person requiring payment of the assessed fees and an additional late payment fee up to $1,000 per tank. The responsible person may appeal any order of the Fund's director.

OUTSOURCED COLLECTION PROCESS
Delinquent accounts are certified to the Attorney General's Office (AGO) a minimum of two times per year. Current program year fees are, in general, certified to the AGO for collection in January of the program year in which the fees became delinquent. As staff resources permit, prior program years' fees and accounts aged beyond twelve (12) months are reviewed and certified to the AGO for collection in September of each year. The AGO aggressively pursues the responsible person for payment of the per-tank, late payment, and transfer fees.

- The AGO charges a collection fee on all amounts collected. If payment is not received, the account is assigned to an independent attorney, known as Special Counsel, located in the responsible person's geographical area.
- Special Counsel charges a collection fee in accordance with the AGO contract in addition to the AGO collection fee. Special Counsel is authorized to file suit against the responsible person. If a judgment is received, a lien may be placed against the responsible person's property.
- If Special Counsel is unsuccessful in its collection efforts, accounts may be forwarded to a third-party vendor specializing in the recovery of underperforming assets.

ASSESSMENT OF INTEREST AND COLLECTION COSTS
Interest is assessed at the annual rate established by the Tax Commissioner on all delinquent amounts certified to the AGO for collection. Pursuant to the policy adopted at the June 8, 2011 Board meeting, all costs of collection, including but not limited to the AGO, special counsel, and third-party vendor fees, shall be assessed to the responsible person as an additional obligation. Both interest and collection costs may be waived at the discretion of the Fund's director. In addition, the Board has elected to authorize the AGO to waive interest when it results in the collection of the per-tank, late payment and/or late payment fees.

REVIEW FOR SPECIAL COUNSEL/THIRD PARTY VENDOR ASSIGNMENT
Pursuant to the policy adopted at the March 9, 2011 Board meeting, all delinquent accounts to be assigned to Special Counsel or third-party vendors for collection shall be approved by the director of the Fund.

ABILITY TO PAY PROGRAM
Responsible persons who, either through the sale or removal of underground storage tanks, are no longer the owner or operator of petroleum underground storage tanks may apply for and receive a determination of the responsible person's ability to pay delinquent fees based upon a demonstration of financial hardship. The director shall review a responsible person's "Application for Individual/Corporate Ability to Pay Fees" and provide a response to the responsible person within a reasonable period of time from the date the Application is received. The determination of a responsible person's ability to pay the delinquent fees is at the director of the Fund's discretion and may result in the write off or a reduction of all fees, including per-tank, late payment, and transfer fees, if any.

RIGHT OF OFFSET
Fees erroneously paid for exempt, non-existent, or otherwise ineligible tank systems, if any, shall be applied to the responsible person's account to offset any delinquent fees, including but not limited to, per-tank fees, late payment fees or other costs, before the account is certified to the AGO for collection. If the amount of the erroneously paid fees exceeds the amount of delinquent fees, a refund of the difference and notification of the offset shall be issued to the responsible person. Any responsible person objecting to the offset may provide additional information and request a second review and reconciliation of the responsible person's account.

CIVIL ACTION FOR NON-PAYMENT OF FEES
Pursuant to O.R.C. §3737.91(G), the director of the Fund may request the Attorney General to bring a civil action, including a temporary restraining order or preliminary or permanent injunction, against the responsible person in the common pleas court of the county in which the underground storage tanks are located. The director of the Fund shall advise the Board of all requests the director makes to the Board's Assistant Attorney General to file such an action and the outcome of those actions.

STATUTE OF LIMITATIONS
O.R.C. §131.02(F)(2) provides a general statute of limitations of forty (40) years from the date of certification to the AGO for the collection of delinquent accounts. Pursuant to the policy adopted by the Board at its September 12, 2007 meeting, the Board authorized the AGO to terminate collection activities after fifteen (15) years from the date of certification. The Board does not have a statute of limitations and may elect to continue collections.

SETTLEMENT OF DELINQUENT ACCOUNTS
Nothing within this policy is intended to limit the director's ability to settle delinquent accounts through, including but not limited to, the O.R.C. §119.09 appeals process, AGO offer-in-compromise program, enforcement process or other settlement negotiations that may arise in the normal course of business.

CONFLICT OF LAW
In the event any portion of this policy is in conflict with State law, that law will prevail.

COLLECTION POLICY ADOPTION
This collection policy shall be adopted by the Board. The Finance Committee will annually review this policy and recommend to the Board improvements or enhancements to the policy. Any modifications to the collections policy shall be incorporated upon approval of the Board.