
THE UST PIPELINE

News from the Petroleum UST Release Compensation Board

James R. Rocco, Chairman

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Board Votes for Early Bond Payoff

At its June 9, 2010 meeting, the Board voted for the early payoff of \$21,300,000 in revenue bond debt, which was due to fully mature on August 15, 2013. Over the past year, the Board weighed the costs and benefits of this decision and ultimately determined it was in the best interest of the Fund.

The most obvious benefit of paying off this debt three years early is a savings to the Fund of approximately \$2.1 million in interest payments. In addition, having paid off this debt, the Board is no longer subject to a bond covenant that required the Board to maintain a \$7.5 million unobligated balance in the Fund. This means the Board now has access to all cash on hand for its daily operations and the reimbursement of eligible corrective action costs.

Since its inception, the Board has issued two sets of revenue bonds. In July 1993, the Board issued its first set of bonds, Series A, totaling \$30 million. A second series of bonds totaling \$35 million, Series B, were issued in July 1998. These two issues provided monies upfront for the reimbursement of claims during the Fund's early years when the claims submitted for reimbursement exceeded the monies available in the Fund for payout. In addition, the bonds provided the Fund with sufficient capital to timely reimburse owners for eligible corrective action costs while maintaining the annual per-tank fee at affordable levels. *(Continued on Page 3)*

Amnesty Program Benefits Tank Owners

The Board instituted its first-ever amnesty program this past April for tank owners with outstanding per-tank and late payment fees and, if applicable, collection costs. The Board certifies outstanding fees to the Attorney General's Office of Revenue Recovery for collection and that office assesses a 10% fee on all amounts collected, which is then charged to the tank owner as collection costs.



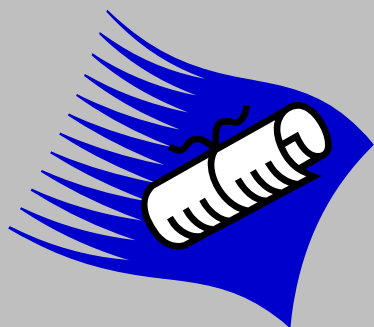
Tank owners who agreed to pay the outstanding prior years' per-tank fees in full or establish and maintain a payment plan received a one-time reduction in late payment fees, and thereby, also a reduction in collection costs. Seventy-three owners contacted the Board's staff about the amnesty program and 54 of these owners made payment arrangements. See the table on Page 3 for a breakdown of the 73 owners' outstanding fees. *(Continued on Page 3)*

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Please note: The Board's office will be closed on December 23, 24 and 31, 2010.

Certificate
of
Coverage
Rule
Change



As of November 19, 2010, the Board has issued Certificates of Coverage for 5,856 facilities. At this time last year, the Board had issued Certificates for 5,317 facilities. This 9% increase in issuance of Certificates from this time last year is the result of a revision of the rule governing the review of applications for a Certificate of Coverage.

This rule revision, effective November 30, 2009, eliminates the need for verification of compliance with the State Fire Marshal's (SFM) rules prior to the issuance of a Certificate. This review process was time-consuming and the processing of the Certificate was placed on hold while the Board's staff requested additional information from the tank owner. In addition, applications could not be reviewed until July 1 because this review was based upon BUSTR's data as of July 1. This program year, the application review began in early May and the first Certificates were mailed out on May 27, 2010.

While the BUSTR data verification is no longer being performed before the issuance of a Certificate, it will occur during the review of an application for eligibility or claim reimbursement. Consequently, owners should ensure that they are in compliance with BUSTR's rules at all times.

As of November 19, 2010, the Board has issued Certificates of Coverage to 2,978 UST owners for 5,856 facilities and 16,753 USTs in Ohio.

If you haven't received this year's Certificate, check the status at www.petroboard.org or call the Board's office at 614-752-8963 or 1-800-224-4659 (Ohio only).

Board Welcomes New Assistant Director

Madelin Esquivel joined the Petroleum UST Release Compensation Board's staff in September 2010 as Assistant Director. In this role, Ms. Esquivel will be responsible for directing the Board's fee assessment and Certificate of Coverage processes, assisting the Board's director with the administrative appeals and rules processes, and administering the Board's outreach efforts as the Communications Coordinator. Ms. Esquivel most recently worked for the Ohio Department of Commerce, Division of Real Estate and Professional Licensing as Licensing Manager, where she was responsible for overseeing the licensing of 60,000 of Ohio's real estate brokers, salespeople and appraisers. Ms. Esquivel earned a bachelor's degree in journalism from Kent State University.



Check out the Board's website at www.petroboard.org!

- Public Inquiry Page – find out the status of a Certificate of Coverage, fee payments, eligibility applications and determinations, and claim reimbursement applications
- Petro Board's Unclaimed Funds List – do you have a pending refund?
- Board Meeting Minutes – read what the Petroleum Board is working on

Early Bond Payoff

(Continued from Page 1)

As expected, paying off the bonds early resulted in a substantial decrease in the Fund's cash balance. Because the majority of the Fund's annual revenues are collected between May and August of each year, the Fund's unobligated reserves will begin to increase with the next fee collection cycle. In addition, based upon the Board's five-year financial projections and recent trends in claim

submissions and reimbursement payments, it is anticipated that the Fund will continue into the near future at its current level of claim reimbursement payments without an increase in annual per-tank fees or deductible amounts.

The Board makes its financial information available to the public on its website at www.petroboard.org/financialinfo.htm.

Claim Settlements

During the first quarter of this program year (July – September), the Board's staff settled 174 claims, totaling about \$1.6 million. An additional \$6 million is anticipated to be paid by the end of the program year, June 30, 2011.

Since the inception of the Fund in 1989, Ohio's UST owners have been reimbursed over \$197 million in costs incurred for remediating petroleum contamination at almost 2,750 Fund-eligible sites. The State Fire Marshal has issued a no further action determination for 1,871 of these sites.

The average cost to clean up a Fund-eligible petroleum release is \$126,808 and the average Fund payout per release after the deductible is applied is \$68,621.

Amnesty Program

(Continued from Page 1)

Of the 73 owners who participated in the program, 35 owners have paid their fees in full, 20 owners have established payment plans with the Attorney General's Office, 15 owners have defaulted on the requirements for participation and three owners continue to work with the Board's staff to resolve outstanding balances. As a result of the program, the Board has already collected \$183,300 in delinquent fees.

By law, Certificates of Coverage cannot be issued to owners with outstanding fees. The amnesty program made it possible for these tank owners to settle their outstanding fees, and upon compliance with the Board's rules, obtain current Certificates of Coverage.

Although the amnesty program ended on June 30, 2010, all owners with outstanding fees are encouraged to contact the Board's office to discuss any delinquent balance. The Board's staff has historically worked with owners to establish payment plans and settle delinquent late payment fees, which at \$1,000 per-tank per-year, can be significant.

Before Amnesty Reduction

Number of Owners	Outstanding Tank & Transfer Fees	Outstanding Late Fees & Collection Costs	Total Amount Due
73	\$393,000	\$550,000	\$943,000

After Amnesty Reduction

Number of Owners	Outstanding Tank & Transfer Fees	Outstanding Late Fees & Collection Costs	Total Amount Due
73	\$393,000	\$78,000	\$471,000

What is Subrogation and How Does it Apply to Tank Owners?

Subrogation, simply stated, is when one party attempts to recover monies it has paid to a person for a claim when a third party was responsible for paying the claim. For UST owners, the Fund is frequently the party who paid the claim, i.e. corrective action costs for a release. The party who actually owes the monies that the Fund paid could be a third party who caused and/or contributed to the release or an insurance company that has underwritten a policy in excess of the Fund deductible.

Subrogation Scenario 1: A third party causes or contributes to an accidental release of petroleum

A contractor installs an UST system but fails to properly install the piping, which results in an accidental release of petroleum from an assured UST system. As required by law, the owner notifies the Board in writing within 30 days of the contractor's action and subsequently files a claim with the Board. The Board settles the claim and reimburses the owner from the Fund for the eligible costs incurred to clean up the release. However, the owner also files a lawsuit against the contractor for causing and/or contributing to the release. The Board's right to subrogation allows the Board to join the owner as plaintiff in the lawsuit to recover the corrective action costs associated with the release that were paid out of the Fund. If the contractor is ordered to pay costs for corrective action associated with the release, the contractor would reimburse both the Board for the amount reimbursed from the Fund and the owner for any costs that were determined to be non-reimbursable under the Board's rules.

Subrogation Scenario 2: An owner has insurance in excess of the Fund deductible

An UST owner files a claim with the Board for an accidental release of petroleum and notifies the Board he has a supplemental insurance plan that covers the cost of the deductible, as well as broader coverage for corrective action costs. At the same time, the owner notifies and files a claim with the insurer. Because the Board has the rights of subrogation, the insurer is the first payer on the owner's claim. Any costs not recovered from the insurer may be submitted to the Board for consideration for reimbursement. If the insurer denies the owner's claim, the owner may submit a copy of the denial letter to the Board for review. The Board may elect to join the owner in a lawsuit against the insurer and/or allow the owner to submit and receive reimbursement for corrective action costs that are determined to be reimbursable under the Board's rules. If the insurer is ordered to pay costs associated with the release, the owner would reimburse the Board for costs also paid by the insurer.

Ohio Revised Code (ORC) 3737 and Ohio Administrative Code (OAC) 3737-1-22 entitle the Board to all rights of the responsible person (or owners in the cases above) to recover costs of corrective action, bodily injury or property damage as a result of a third party causing or contributing to the release of petroleum from an assured UST system. Failure to notify the Board within 30 days of the actions of a third party who contributed to a release or otherwise impairing the Board's subrogation rights may result in a minimum reduction of 50% in the amount of eligible reimbursable corrective action costs and/or compensation to be paid to third parties for bodily injury or property damage. In addition, the ORC and OAC prohibit a responsible person from accepting payment for the same costs from both the Fund and a third party who caused or contributed to the release and/or an insurance company; a process known as "double dipping."

If you can recover or have recovered corrective action costs from another party, including an insurance company or any third party who may have caused or contributed to a Fund-eligible release at your UST site, you must immediately notify the Board or you risk jeopardizing future reimbursement from the Fund. If you have questions regarding the Board's subrogation rights, please contact Cheryl Hawkinson, Assistant Attorney General, at 614-466-2980.