
THE UST PIPELINE

News from the Petroleum UST Release Compensation Board

James R. Rocco, Chairman

Starr J. Richmond, Executive Director

Volume 18 Issue 2

December 2013

Don't Get Caught Without Fund Coverage!

If you're considering removing underground storage tanks (USTs), it is vital to have a valid Certificate of Coverage (COC) in place at the time of the removal. In order to be eligible to receive reimbursement from the Financial Assurance Fund (Fund) for costs to cleanup a release of petroleum, the Board's rules require that a valid COC be in effect at the time the suspected release or release, whichever is first, is discovered. Releases are often discovered during the closure assessment or during repairs and modifications. To be determined eligible to claim under the Fund, you must have a valid COC in effect at the time of these activities.

To receive a COC, owners must pay all prior and current year fees, demonstrate financial responsibility for the deductible amount and certify compliance with the State Fire Marshal's (SFM) rules for the operation and maintenance of USTs. Once the COC is issued, compliance with the SFM's rules must be maintained in order to ensure the validity of the COC. If the UST system from which the release occurred is out of compliance at the time the release is discovered, eligibility to claim against the Fund will be denied.

The COC program year begins on July 1 and runs through June 30 of the following year. To prevent a lapse in coverage, the requirements for the issuance of the COC, including full payment, must be met on or before July 1. Remember, fees are due for tanks that are in the ground at *any time* during the program year. For example, if a tank is removed on July 2, 2013, the 2013 program year per-tank fees are due for that tank.

Check the status of your COC on the Board's Public Inquiry webpage at www.petroboardinquiry.org.

USTs and Exempt Substances



In the last few years, certain non-petroleum substances, including 100% biodiesel and diesel exhaust fluid, have gained popularity. Many underground storage tank (UST) owners are not aware that financial responsibility is not required for potential releases of these products from USTs because they do not contain petroleum.

100% Biodiesel

Biodiesel is a form of fuel that can be manufactured from vegetable oils, animal fats or recycled restaurant grease. Biodiesel can be used in its pure form, which consists of 100% biodiesel (B100), or it can be blended with petroleum diesel at any concentration. B20 (20% biodiesel, 80% petroleum diesel) is the most common blend of biodiesel sold in the United States. Since B100 does not contain any petroleum, it is not a Bureau of Underground Storage Tank Regulations (BUSTR) regulated petroleum product. USTs containing a mix of biodiesel and diesel (e.g., B1 – B99) are BUSTR-regulated petroleum USTs and require proof of financial responsibility.

Diesel Exhaust Fluid

According to the U.S. Environmental Protection Agency (EPA), Diesel Exhaust Fluid (DEF) is a 32.5% aqueous solution of urea used in Selective Catalytic Reduction (SCR) technology as one way to reduce nitrogen oxide emissions from heavy-duty diesel engines. The SCR technology is installed in 2010 and later model year heavy-duty vehicles and uses a catalyst system to break down dangerous nitrogen oxide emissions produced by diesel engines into nitrogen and water. DEF is sprayed into the exhaust stream by the SCR injection system. It is not a fuel additive and never comes into contact with diesel. Since DEF does not contain any petroleum, it is not a BUSTR-regulated petroleum product.

If you would like information on whether your UST contains a BUSTR-regulated product, contact BUSTR at 614-752-7938. For information on the regulatory status of USTs containing DEF, read the US EPA's memo at www.epa.gov/oust/compend/DEF_UST_Memo.pdf.

First vs. Third-Party Eligibility

Most tank owners know when to file for eligibility to claim against the Financial Assurance Fund (Fund), but once first-party eligibility is granted, it's important for owners to know the difference between first-party and third-party eligibility. A tank owner or operator (responsible person) is granted first-party eligibility for the costs of corrective action to clean up a release from an assured underground storage tank (UST). Third-party eligibility occurs when a third party (who is not the responsible person) has experienced bodily injury or property damage from the petroleum release.

First-Party Eligibility

First-party eligibility is available solely to the entity named on a valid Certificate of Coverage at the time the release was required to be reported to the State Fire Marshal regardless of whom or what caused the release to occur. First-party eligibility allows the tank owner to file claims for costs of corrective action activities conducted at the release site and on any other impacted property. Further, costs associated with the cleanup of a release caused by the actions of another party (i.e., a contractor who performs work on an UST) are still covered under the first-party eligibility.

Third-Party Eligibility

If a responsible person is determined to be eligible for reimbursement from the Fund via first-party eligibility, and a third party files an action against the responsible person to recover costs related to bodily injury or property damage suffered as a result of the eligible release, the responsible person must apply for third-party eligibility with the Fund in order to recover any costs stemming from the action.

Pursuant to Ohio Administrative Code (O.A.C.) 3737-1-03 (A)(3), "bodily injury" means injury to the body, sickness or disease contracted by a person as the result of an accidental release of petroleum.

Pursuant to O.A.C. 3737-1-03 (A)(21), "property damage" means actual and reasonable, incurred or pending expenses for damage to property as the result of an accidental release of petroleum that are not covered by insurance.

The following items are specifically excluded from property damage and are not covered by the Fund: loss of profits, loss of business, taxes, utility expenses, punitive damages, exemplary damages, telephone, television, internet, cable and/or satellite fees, and all costs of litigation, including but not limited to court costs, depositions, experts and attorney fees.

A third-party eligibility application must be submitted to the Board within **THIRTY DAYS** from the date a responsible person receives any of the following:

- Service of a third-party complaint against the responsible person;
- Receipt of a third-party demand for settlement; or
- Notice of representation of a third party in a lawsuit against the responsible person.

When a review of the third-party application has been completed, a determination is issued.

Although the Board does not stand as a representative of the responsible person, it maintains the right to enter into a reasonable settlement with the responsible person and/or the third party.

Eligibility must be maintained with the Fund as required in O.A.C. 3737-1-19 (B). A determination of eligibility does not constitute an obligation of the Fund to reimburse a tank owner.

An application for first-party eligibility is on the Board's website at www.petroboard.org/forms.htm. Please contact the Board's office at 614-752-8963 or e-mail info@petroboard.org for an application for third-party eligibility.

Claim Settlements

Since the Fund's inception in 1989, the Fund has reimbursed \$217,969,653 for costs incurred to assess and remediate petroleum contamination at 2,987 Fund-eligible sites across Ohio.

The average cost to clean up a Fund-eligible petroleum release is \$128,690 and the average Fund payout per release after the deductible is applied is \$69,122.

Board Bids Fond Farewell to Staff Member



Michael Grube retired effective June 28, 2013 after serving the Board for more than 20 years.

As a Claims Analyst, Michael was responsible for reviewing requests for the pre-approval of costs and claim applications submitted to the Fund for the reimbursement of corrective action costs resulting from petroleum releases.

Michael started at the Board in October 1992 as a temporary employee hired to help reduce the claims backlog. As the number of claims continued to grow, Michael was hired as a permanent employee in March 1993.

About his 20 years with the Board, Michael said, "I'm proud to have settled more than 3,200 claims for payments of over \$56 million. However, my 20+ years at the Petroleum Board have come to an end and I'm able to relax knowing I did my share."

Since retiring, Michael has kept busy with his cycling activities. He rides in scheduled group bicycling rides every day of the week through the Westerville Bicycle Club and Columbus Outdoor Pursuits. This year, he expects to exceed a total of 6,000 miles of riding. Michael recently participated in Pelotonia, a grass-roots fundraiser held every August to benefit cancer research. He said, "I raised most of my commitment goal with the Petro Board staff being my greatest contributor. Thanks so much. You guys are the best! Don't forget to wave to me when you see me riding in a group throughout the counties of Franklin, Delaware, Union, Licking and points beyond!"

Board Welcomes Two New Employees

The Board recently welcomed Dave Gram and Valery Gatallin as Claims Analysts, who are responsible for reviewing requests for the pre-approval of costs and claim applications submitted to the Fund for reimbursement of corrective action costs resulting from petroleum releases as well as assisting in the development of usual, customary and reasonable rates.

Dave Gram joined the Board's staff in May. Dave is a geologist with more than nine years of professional experience as an environmental consultant. Most recently, Dave worked as a project manager specializing in environmental investigations and implementation of remediation technology for a variety of clients in the industrial, manufacturing and petroleum industries. Dave is a graduate of Ohio University with a Bachelor of Science in Geological Sciences.

Valery Gatallin joined the Board's staff in July. Prior to coming to the Board, Val worked as a Senior Geologist with the Louis Berger Group, at which he participated in large Superfund projects. In the past, Val worked as a Post-Doctoral Researcher (Geologist) at The Ohio State University and as a Senior Project Manager at G.C. Environmental, where he was responsible for all aspects of site investigation and remediation. Val is a Certified Professional Geologist and earned a Master of Science in Geology from Leningrad State University and a Ph.D. in Geology from the Federal Geological Institute in St. Petersburg, Russia.

2013 Certificates of Coverage

As of October 31, 2013, the Board has issued Certificates of Coverage to 3,021 UST owners for 6,318 facilities and 18,323 USTs in Ohio.

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

Petroleum Board Member Update



James R. Rocco, Chairman of the Board, was reappointed to the Board in July 2013 for a term ending July 2016. Mr. Rocco is an original member of the Board, which first met in November 1989, and he serves as a representative of petroleum refiners.

Mr. Rocco has over 30 years of experience in environmental risk management and decision making, including petroleum storage and dispensing system installation and management, corrective action, environmental compliance, legislative and regulatory technical support, and emergency response. He is a principal in Sage Risk Solutions, LLC, a privately-held corporation specializing in environmental risk management for commercial, industrial and Brownfield properties. Mr. Rocco was previously employed by BP for 25 years in engineering and management positions in construction, maintenance and environmental engineering. He has served as a consultant to the United States Environmental Protection Agency's Science Advisory Board's Environmental Engineering Committee and actively participated as a member of the American Petroleum Institute for over 15 years. Mr. Rocco received his Bachelor of Science in Civil Engineering from the New Jersey Institute of Technology in 1974.



Bruce W. Kranz was appointed to the Board in May 2013 for a term ending July 2015. Mr. Kranz serves as a representative with experience in property and casualty insurance. Mr. Kranz has 40 years of comprehensive experience in the management and execution of the business related to environmental engineering, civil construction and hazardous materials management. This experience includes over 20 years of progressive management responsibility in the coal mining industry.

Since 2000, Mr. Kranz has been responsible for the execution of the Environmental Risk practice for the Hylant Group. In this role, he has established a national practice that structures commercial environmental insurance products and solutions primarily for commercial clients. Mr. Kranz specializes in the structure of environmental insurance for acquisitions, divestitures and the commercial redevelopment of Brownfield sites.

Additional Appointed Board Members

John H. Hull – Vice-Chairman – professional engineer with geology experience who represents the interests of the public and is not associated with the petroleum industry – term ends July 2014

Stephen L. Hightower – represents businesses that own USTs – term ends July 2014

Cheryl A. Hilvert – represents local government – term ends July 2015

Donald J. Kuchta – represents retail petroleum dealers – term ends July 2014

Thomas G. Stephenson – represents petroleum marketers – term ends July 2015

Vacant – representative of businesses that own USTs

Vacant – professional engineer with geology experience who represents the interests of the public and is not associated with the petroleum industry