
THE UST PIPELINE

News from the Petroleum UST Release Compensation Board

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Volume 19 Issue 1

May 2014



The Fund Reaches Its 25th Year!

The Board proudly marks the Financial Assurance Fund's 25-year anniversary. While the number of assured tanks has greatly decreased over the past 25 years, little has changed in the administration and philosophy envisioned by the early crafters of the Fund.

The Fund was enacted by the Ohio General Assembly on July 11, 1989 through House Bill (H.B.) 421, which was a two-year long process involving state regulatory agencies and petroleum representatives. The early architects of the program wanted to fashion a competent, stable financial assurance mechanism that would greatly benefit Ohio's tank owners and comply with federal mandates. The culmination of H.B. 421 resulted in the creation of the Petroleum Underground Storage Tank (UST) Release Compensation Board, made up of 12 appointed members and three ex-officio members; the placement of regulatory authority for USTs with the State Fire Marshal's office; and the designation of an "assurance" program to work like insurance to fulfill the federal financial responsibility requirement.

Thanks to excellent stewardship and owner participation over the past 25 years, the Fund has been able to maintain a steady payout of claims to Ohio's tank owners for corrective action costs. Since the Fund's inception, more than \$220 million in claims has been paid for corrective action work at more than 2,922 sites in Ohio.

H.B. 421 gave the Board the authority to issue revenue bonds to generate funds to pay claims and to invest Fund monies and retain the investment income. Thus, the Board issued two sets of revenue bonds in 1993 and 1998 for \$30 million and \$35 million, respectively. The early payoff of the second set of bonds in 2010 resulted in a \$2.1 million savings in interest payments. Since the payoff of the bonds, the unobligated balance has steadily increased. The Fund began program year 2013 (July 1, 2013) with an unobligated balance of approximately \$25.9 million. Based on the Fund's financial projections, the unobligated balance will be approximately \$26.3 million at June 30, 2014.

The projected unobligated balance compares favorably to the Board's \$27.7 million estimate of the Fund's future claim payments for releases discovered as of June 30, 2013. The estimate is revised on an annual basis and is calculated using actuarial methods and assumptions based on the Fund's historical claim payments. It has ranged between a high of \$69.9 million in fiscal year 2000 to the current low of \$27.7 million.

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Annual Per-Tank Fees Reduced

At its March meeting, the Board voted to reduce the annual Financial Assurance Fund fee from \$600 per tank to \$500 per tank for coverage at the standard \$55,000 deductible. Additionally, the per-tank fee for coverage at the reduced \$11,000 deductible will decrease from \$800 per tank to \$700 per tank. The Board's Finance Committee recommended the reduction in the fee based upon a review of the Fund's unobligated cash balance and the projected revenue and operating expenses over the next five years, including the amount of the estimated unpaid claim liability.



The decrease is effective for the 2014 program year (July 1, 2014 – June 30, 2015).

The Certificate of Coverage applications, which were mailed to all owners of record on April 28, 2014, reflect the reduced fee amounts. To prevent a lapse in coverage, annual per-tank fees are due July 1. For more information about Financial Assurance Fund fees, contact the Board's compliance staff at (614) 752-8963 or (800) 224-4659 (Ohio only).

Long-time Board Employee Retires

Mary Jo McKenzie retired effective January 1, 2014 after serving the Board for 12 years. As Claims Coordinator, Mary Jo was responsible for reviewing and processing incoming claims, settlement determinations and claim payments, as well as providing information to tank owners, consultants and the general public about claims procedures and the documentation required.

After spending 17 years raising her four sons, Mary Jo began her business career at Peabody's International as a Travel/Transportation Manager. Over the years, Mary Jo has held numerous positions, including Special Projects Manager for Marc Associates, Director of the Downtown Council for the Columbus Area Chamber of Commerce, Corporate Sales Director for the Convention & Visitors Bureau, Marketing Director for Executive Education at Ohio State University, and Economic Development Director for the City of Wahpeton, North Dakota. In May 2001, Mary Jo began working for the Board as the Claims Coordinator.

Mary Jo said the term "retirement" doesn't describe her time because she has so much to do and look forward to in the future. She now spends her time taking courses, working in her flower garden, exercising and enjoying her 18 grandchildren, including 10-month old triplets!

The Board's staff will always remember Mary Jo for her friendliness and her legendary organizational skills. The Board and its staff wish her a long and happy retirement!

Reduced Deductible Eligibility

As you know, Fund coverage of up to \$1 million dollars less a deductible is available to Ohio's tank owners. This coverage is offered to tank owners at two deductibles - \$500 per tank for the \$55,000 deductible and \$700 per tank for the \$11,000 deductible.

Ohio Revised Code 3737.91 and Ohio Administrative Code 3737-1-06(B) limit the reduced deductible to a responsible person owning, or owning or operating, six or fewer tanks. If you maintain financial responsibility for the deductible amount of coverage for seven or more tanks, as an owner or an operator or both, you are not eligible for Fund coverage at the reduced deductible for those tanks.

Fund Reaches 25!

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In terms of investments, the Board had historically invested unobligated Fund monies in the State Treasury Asset Reserve of Ohio (STAR Ohio). STAR Ohio is a highly-rated public investment pool administered by the State Treasurer. However, as a result of the significant decrease in the return on STAR Ohio investments, the Board worked with the State Treasurer's office to come up with new investment strategies to maximize the return on monies held in the STAR Ohio unobligated account. Since January 2013, the Board has invested a total of \$8 million – \$4 million in U.S. Treasury Bonds and \$4 million in U.S. Agency Callable Bonds. These investments are laddered over a three-year period so that a portion of the investments mature annually. Upon maturity, the funds will be reinvested in similar instruments, or if needed to meet obligations or expenses, returned to the STAR Ohio unobligated account.

This program year, the Board voted for a reduction in the annual per-tank fees for the first time since the inception of the Fund. Decreasing the annual per-tank fee by \$100 per tank will decrease tank owners' cost of compliance by \$2 million annually; the average savings for each tank owner is estimated to be \$640.

The past and present Board members' commitment, the dedication of the Board's staff and the continued support of Ohio's tank owners have made for a successful and solvent Fund that tank owners can depend on for many years to come. The Board will continue to look ahead and plan for the Fund's successful future. As always, if you have any questions, require assistance or would like to be placed on the Board's mailing list, please contact the Board's office at (614) 752-8963.

BUSTR Introduces Revolving Loan for Political Subdivisions

The Bureau of Underground Storage Tank Regulations (BUSTR), Division of State Fire Marshal, has begun to implement a revolving loan fund program for political subdivisions, including Community Improvement Corporations, as defined in Ohio Revised Code 3737.883 (A).

Revolving Loan Guidelines:

- For any funded activity, the property on which the underground storage tanks (USTs) are or were formerly located must be within the territorial boundaries of the political subdivision.
- For UST removals, the political subdivision must be the owner but not the operator of the property.
- For site assessments and corrective actions, there must be no financially-viable responsible persons available to conduct the activity.



Funds borrowed by a political subdivision may be used for removing existing USTs, performing or completing assessment for a former UST site and performing or completing corrective action at a former UST site. The loan is granted on an interest-free basis for a period not to exceed 10 years. The repayment terms are established in the loan agreement. For any funded activity, the political subdivision must commit to spend, from its own funds, an amount equal to five percent (5%) of the loaned amount.

Application documents and procedures will be available this Spring. The distribution of loan funds will begin after July 1, 2014. For more information about the Revolving Loan Fund, contact BUSTR at (614) 752-7938 or (800) 686-2878.

Financial Responsibility Requirements for Waste Oil Tanks

Tank owners often ask, "Do underground waste oil tanks require proof of financial responsibility?" Based upon the definitions of an underground storage tank and a regulated substance, the answer is "yes."

Ohio Revised Code (O.R.C.) 3737.87 (P) defines an underground storage tank as one or any combination of tanks, including the underground pipes connected thereto, that are used to contain an accumulation of regulated substances the volume of which, including the volume of the underground pipes connected thereto, is 10% or more beneath the surface of the ground.

The term does not include any of the following:

- Pipeline facilities;
- Farm or residential tanks of 1,100 gallons or less used for storing motor fuel for noncommercial purposes;
- Tanks used for storing heating fuel for consumptive use on the premises where stored;
- Storm or waste water collection systems;
- Flow-through process tanks; and
- Septic tanks

Further, O.R.C. 3737.87 (L) defines a regulated substance as petroleum or any substance identified or listed as a hazardous substance in rules adopted under division (D) of section 3737.88 of the Revised Code.

A waste oil tank contains an accumulation of a regulated substance (waste oil); therefore, financial responsibility, including participation in the Financial Assurance Fund, is required.

For more information about Ohio's financial responsibility requirements or to find out if you are required to have financial responsibility for your UST, contact the Bureau of Underground Storage Tank Regulations (BUSTR) at (614) 752-7938.

Claim Filing Deadlines

On average, 17.8% of all costs disallowed in the last three years has been due to the untimely filing of the Claim Reimbursement Application. In general, Ohio Administrative Code 3737-1-12 requires costs to be submitted to the Board within one year from the program task completion date. The rule defines the completion date as the date the corrective action activities are required by the Bureau of Underground Storage Tank Regulations (BUSTR) to be completed.

Where the corrective actions for a particular program task were incomplete at the time the cleanup of the release was mandatorily transitioned to BUSTR's 2012 corrective action rule on October 1, 2012, the costs incurred for the work conducted under the incomplete program task were required to be submitted in a claim application on or before October 1, 2013. If an extension of time to continue corrective actions under an earlier version of the corrective action rule (i.e. 1992, 1999 or 2005) was granted by the State Fire Marshal and the release is later transitioned to the 2012 corrective action rule, any costs incurred for work conducted under a program task that was incomplete at the time of the transition must be submitted for reimbursement in a claim application within one year of the date of the transition to the 2012 rule.

For more information on the deadlines for claiming costs for reimbursement from the Fund, see the enclosed insert.

Mandatory Pre-Approval of Costs

The Board adopted a cost pre-approval process in 1994. Although the rule has been modified when necessary to coincide with BUSTR's rules, the purpose of pre-approving costs remains the same. First, it provides owner/operators with assurance of the amount that will be reimbursed before the owner/operator incurs the costs and second, it assists the Board with controlling costs to the Fund and, thereby, helps to keep tank fees affordable.

Ohio Administrative Code (O.A.C.) 3737-1-12.1 was amended effective November 30, 2009, to require estimated costs and completion schedules for certain corrective action activities to be submitted for pre-approval. These activities include:

- Interim Response Actions requiring BUSTR approval
- Remedial Action Plans (RAPs)
- When the estimated costs exceed \$6,000 for:
 - > Tier 3 Evaluation Plans
 - > Monitoring Plans associated with tier evaluation reports
 - > Plans to calibrate or disprove the fate and transport model
 - > Free product recovery (FPR) evaluations if recovery continues beyond one year

After initial pre-approval of the estimated costs is granted, owner/operators must annually submit pre-approval applications to the Board's Director for RAPs and FPR activities, unless allowed otherwise by the Director. In addition, if during implementation of the corrective actions for which pre-approval was required, the actual costs are anticipated to exceed the lesser of \$6,000 or 20% of the pre-approved amount, owners/operators must submit a revised estimated cost and completion schedule to the Director.

Pursuant to O.A.C. 3737-1-09(A)(13), failure to seek cost pre-approval when required will result in a reduced reimbursement of 50% of the usual, customary and reasonable costs of the least expensive remedial alternative as determined from the Fund's experience.

Voluntary Cost Pre-Approval

An owner/operator also may submit costs for voluntary pre-approval before beginning any work, including site assessment activities and pilot testing. The owner/operator will be notified in writing of the costs that are pre-approved for the proposed scope of work.

Upon the proper submission of a claim application in accordance with O.A.C. 3737-1-12, the Fund will reimburse actual corrective action costs that are typical based on the Fund's experience for similar work and that are documented and eligible for reimbursement in accordance with the Board's rules.