

WHY THE BOARD IMPOSES FILING DEADLINES

The Fund was created to provide Ohio's petroleum UST owners and operators with a viable mechanism to meet federal financial responsibility requirements. It exists to reimburse owners and operators for reasonable costs necessary for corrective action and third-party liability resulting from releases from petroleum UST systems in compliance with state and federal UST regulations. The Fund's only source of income is from annual fees paid by tank owners and operators and interest income on its investments. However, in order to minimize the amount of the annual fees paid by the UST owners and operators and still ensure that there are available assets to meet reimbursement needs, the Board has implemented cost control measures.

A time requirement for identifying potential claims against the Fund is necessary if the Fund is to be managed effectively. One of the Board's primary responsibilities is to preserve the solvency of the Fund, therefore it must be able to reasonably predict its income and expenses and manage its liabilities. Similar to an insurance company, the Fund cannot operate under circumstances where claims against it would unexpectedly appear years after the losses were incurred, or even years after the owner and operator ceased paying annual tank fees. This is an outcome that would not work for any business, and it does not work for the Fund. The Fund's members expect the Board to do everything in its power to provide protection from sudden, unexpected fee increases caused by sudden, unexpected liabilities.

There are few, if any, legal proceedings where persons seeking reimbursement have an indefinite amount of time to bring their claims. Instead, set time periods for seeking redress are created. These time frames are commonly referred to as limitation periods and they are essential to prevent problems associated when too much time elapses between when a release is discovered and when a claim is filed.

The Board has implemented two limitations periods, one for filing eligibility applications and the other for filing claim applications. The eligibility limitation period requires owners and operators to file eligibility applications with the Fund within one-year from the date the release from their tank was required to be reported to the Fire Marshal. This limitation period is important because, if a person submits a claim for reimbursement of a petroleum release discovered a decade or more ago, it can be impossible to verify whether the release originated from a tank that is eligible for Fund coverage. This is particularly true at sites with both eligible and ineligible tanks. In such situations, without a limitation period Fund monies could be paid to clean up releases from tanks which are not truly eligible.

The claim limitation period clarifies the time limitation for filing claim applications for corrective action costs associated with particular program tasks. A program task is a specific corrective action activity, such as immediate corrective action or site assessment. For additional information refer to page one of this newsletter and the enclosed table.

The claim limitation period protects the Fund from the submission of claims for costs incurred so long ago that there is no way for the Board to verify that they are legitimate.

Recently, the Board's limitation period for eligibility applications has been challenged in the Courts. An appeal is pending with the Ohio Supreme Court. The Board is defending the validity of the eligibility limitation period since it, along with the claim limitation period, is essential to the Board's ability to project future liability and revenue requirements and effectively manage the Fund's resources.