Petroleum Underground Storage Tank Release Compensation Board

Senate Finance and Financial Institutions Committee

Ann Braam, Budget Analyst

Legislative Service Commission

May 3, 2005

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for the

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Catalog of Budget Line Items

LSC Budget Spreadsheet By Line Item: Executive to House Passed

May 3, 2005

Petroleum Underground Storage Tank Release Compensation Board

- No GRF funding
- To date, more than $125.3 million has been disbursed for the reimbursement of corrective action costs

OVERVIEW

The Petroleum Underground Storage Tank Release Compensation Board (PUSTRCB) was established in July, 1989 and consists of nine members appointed by the Governor. The State Treasurer and the directors of the Department of Commerce and the Ohio Environmental Protection Agency serve as ex-officio members. The Board serves Ohio's underground storage tank (UST) owners and operators through administration of the Financial Assurance Fund (FAF) under authority from sections 3737.90 to 3737.99 of the Revised Code. The fund provides a mechanism for all UST owners and operators to meet United States Environmental Protection Agency (USEPA) regulations requiring them to demonstrate financial capability (set at $1 million) to pay for potential damages caused by releases from their USTs. The fund assures UST owners reimbursement of up to $1 million, minus a deductible, for necessary corrective actions. The fund reimburses responsible parties for costs of corrective actions and/or third-party liability for property damage or bodily injury caused by an accidental release of petroleum from regulated USTs. Currently, the FAF assures approximately 3,300 UST owners and 22,700 USTs. The average petroleum facility in Ohio has three USTs.

The Board's entire budget is for personnel costs, which are expended through the PUSTRCB Staff Fund (Fund 691). All expenditures related to reimbursement for corrective actions are paid directly from the FAF via a warrant of the State Treasurer. The current unobligated balance of the FAF is approximately $14.3 million. The obligated balance of approximately $5.1 million represents the amount the Board anticipates paying for claims reimbursements through the end of FY 2005. An additional $7.4 million is maintained in the debt service account as restricted investments.

The Board has a current staff of 15 full-time employees and one part-time temporary employee who perform the daily operations of the Board. The Board intends to create another position in early FY 2006 to help manage the current backlog of outstanding fees and the refunding of overpayments, bringing the total to 16 full-time employees for the FY 2006-2007 biennium.

Executive-Recommended Funding, FYs 2006-2007

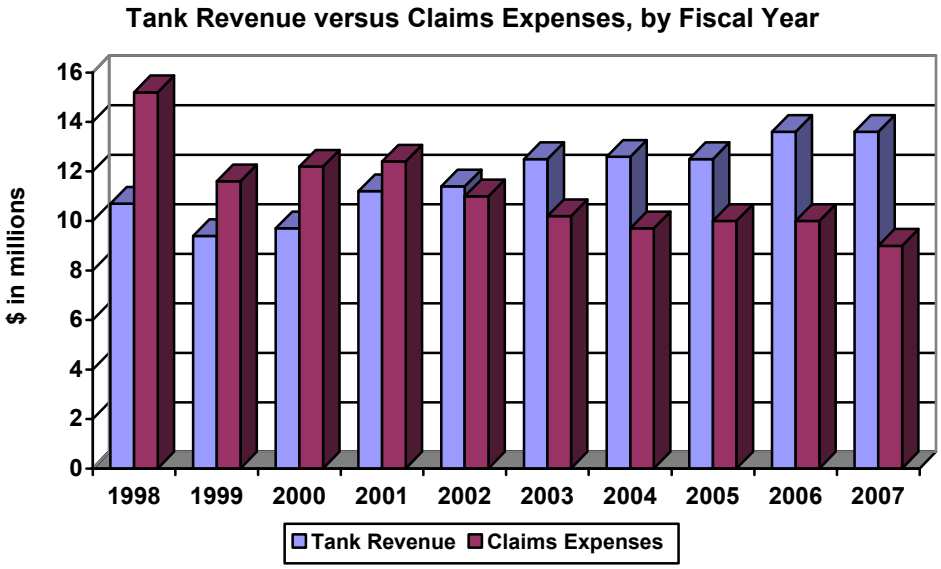
The Executive recommends funding of $1,075,158 in FY 2006, which is equal to estimated expenditures in FY 2005. The executive recommendation for FY 2007 is $1,116,658, an approximate 4% increase over the FY 2006 recommendation.

The Financial Assurance Fund (FAF)

The FAF consists of fees and charges paid by owners of USTs, interest earned on the moneys in the fund, and proceeds from any sale of revenue bonds authorized by the Board. Ohio's underground storage tank owners pay annual tank fees into the FAF. Effective FY 2005, coverage under the standard deductible of $55,000 is provided to tank owners at an annual fee of $500 per tank. Owners of six or fewer USTs may pay an additional fee of $150 per tank ($650 per tank total) and reduce their deductible to $11,000 per release. The Board anticipates an estimated $13.6 million will be collected in UST fees in each of FY 2006 and FY 2007. It expects $10,000,000 and $9,000,000 in claims expenses in FY 2006 and FY 2007, respectively. Aside from these expenses, the FAF may be used only to pay interest on revenue bonds and to pay the administrative costs of the Board. The Board issued $30 million in revenue bonds in FY 1994 and an additional $35 million in FY 1999. No additional issues are anticipated for the FY 2006-2007 biennium.

Revenue and Claims – Ongoing Changes

USEPA issued mandates to upgrade, remove, or replace USTs by December 1998. As a result of this requirement, the number of assurable petroleum tanks decreased as tanks either came into compliance or were removed. This decrease continues currently, although at a slower rate than in the years predating 1998. In 1989 there were 50,000 assured tanks. Currently, there are 23,000. Fewer assured tanks results in decreased fee revenue. At the same time, the amount of claims reimbursement costs, while decreasing, has not decreased at the rate originally projected. Therefore, the Board has had to incrementally increase the fees in recent years in order to meet the continued demands for reimbursement. The table compares tank revenue to claims expenses from FY 1998 to FY 2007, with figures for FY 2006 and FY 2007 being estimates.



The Board determines fee amounts based on the projected unobligated balance of the FAF, claims paying experience, and claims expected to be paid in the coming fiscal year. The number of tanks expected to be assured is also considered. A $50 per-tank fee increase, which is required to generate an additional $1 million in revenue, currently is pending in JCARR and

expected to take effect on July 1, 2006. The Board indicates that another fee increase in FY 2007 is a possibility.

In 1999, the Bureau of Underground Storage Tank Regulations' (BUSTR) corrective action rule was amended to emphasize risk-based corrective action, providing a more flexible process to allow site-specific decisions to be made. This has resulted in more cost-effective remediations and is partially responsible for the decline in claims expenses in recent years. At present, approximately 67.5% of open eligible sites are working under the risk-based corrective action rule. Finally, the Board annually establishes a maximum amount to be paid in claims reimbursements. In recent years, as a result of the depletion of bond proceeds, this amount has been set at an amount less than anticipated fee revenue receipts for the fiscal year. Currently, claims payments are capped at $10 million per year.

Ongoing Initiatives

In the current biennium, the Board joined efforts with the Office of the State Fire Marshal and the State Emergency Response Commission to combine underground storage tank registration processes. By aligning the Board's registration process with that of the Office of the State Fire Marshal and the State Emergency Response Commission, the Board gained access to the data collected and maintained by those agencies. As a result, the Board now has the ability to more accurately determine an owner's compliance with the UST regulations. This has helped to ensure that noncompliant owners are identified early in the process so that the owner has the ability to correct the noncompliance before a release occurs and FAF coverage is denied.

In FY 2004, the Board also began working with UST owners with multiple petroleum releases and large numbers of claims to negotiate lump sum settlements for outstanding claims, thus expediting the settlement of claims and reducing the Board's claim review time. Through this approach, lump sum payments for approximately 140 claims have been negotiated with two major oil companies. These lump sum agreements have saved more than 400 staff hours, resulting in reduced personnel and administrative costs.

Finally, in FY 2004 the Board expanded the pre-approval requirements to require an annual submission of not only estimated costs but also a brief summary of the progress of the site remediation and an evaluation of whether the current remedial action approach at the site remains to be the most cost-effective alternative. Failure to annually submit this information and to receive Board approval results in a 20% penalty on claim reimbursements. This expanded pre-approval process has helped to ensure that only successful clean-up methods are being continued and that only necessary corrective action costs are expended in cleaning up sites.

Challenges In FYs 2006-2007

A number of events, including a FY 2000 administrative rule change that set a limit for submitting new claims (one year from the completion of a program task), an amnesty period for filing old claims and eligibility applications, and a large number of USTs being removed in the years following the 1998 federal upgrade deadline, resulted in a larger than expected number of claims being submitted. Due to the backlog created by this influx of claims reimbursement applications, the Board's response time between claims submission and reimbursement has increased and now spans approximately one year. Approximately 1,160 claims are currently pending review. In the coming biennium, the Board hopes to reduce this time frame and the backlog in claims.

In addition, in recent years the focus of the Reporting and Regulation program has changed from the assessment and collection of fee revenue to the review of compliance with UST regulations for the issuance of Certificates of Coverage. As responsibilities for this program expanded, sufficient staff has not been available to support the reconciliation of UST owners' accounts and the resulting assessment and collection of outstanding fees and, in some instances, the refunding of overpayments. As a result, the amount of delinquent fees as well as the liability for refundable fees has increased. At recommended funding levels, the Board indicates that it will be able to address this challenge in the coming biennium.

Staffing Levels

The following table displays the staffing levels of the Board from FYs 2002 through 2005, with estimated levels provided for FYs 2006-2007. Recommended funding will support a new full-time position in FYs 2006-2007 in the Reporting and Regulation program to review old accounts for unpaid fees and to research and issue refunds of erroneously paid fees. The Board indicates that this new position will help eliminate the approximate $1 million backlog in pending refunds and $5 million in outstanding past-due fees identified to date.

Petroleum Underground Storage Tank Release Compensation Board Staffing Levels, by Fiscal Year						
					Estimated	
Program Series/Division	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**
Administration	3	3	3	3	3	3
Eligibility & Reimbursement	6	6	6.5*	6.5*	6	6
Reporting & Regulation	5	5	6	6	7	7
Totals	14	14	15.5	15.5	16	16

*The part-time temporary position that began in FY 2004 assists with reviewing eligibility applications in the Eligibility and Reimbursement program area. This position began in early FY 2004 and ended prior to the end of FY 2004. The Board recently filled this position again with an ending date of July 2005. Due to the temporary nature of this position, it is not reflected in FY 2006-2007 staffing levels.

The lower staffing level in previous years compared to the coming biennium is partly attributable to relatively high turnover and subsequent open positions. The Board budgeted for a full staff in the past but, as a result of turnover, tended to spend less on personnel than estimated. The Board indicates that staffing is currently holding steady. Recommended funding is sufficient to allow all positions to be filled.

ANALYSIS OF EXECUTIVE PROPOSAL

Petroleum Underground Storage Tank Release Compensation Board

Purpose: The Petroleum Underground Storage Tank Release Compensation Board provides a low cost mechanism for owners of Ohio's underground storage tanks (UST) to comply with the United States Environmental Protection Agency's regulations.

The following table shows the line item that is used to fund the Petroleum Underground Storage Tank Release Compensation Board, as well as the Governor's recommended funding levels.

Fund	ALI	Title	FY 2006	FY 2007
Agency Fund Group				
691	810-632	PUSTRCB Staff	$1,075,158	$1,116,658
		Agency Fund Group Subtotal	**$1,075,158**	**$1,116,658**
Total Funding: Petroleum Underground Storage Tank Release Compensation Board			**$1,075,158**	**$1,116,658**

Funding for the Petroleum Underground Storage Tank Release Compensation Board supports the following two programs:

- ***Eligibility and Reimbursement Recommendation and Determination***
- ***Reporting and Regulation***

Eligibility and Reimbursement Recommendation and Determination

Program Description: A primary function of the Eligibility and Reimbursement Recommendation and Determination program is to determine who is eligible for reimbursement costs and how much money to grant in the event of an accidental release. For owners to seek reimbursement from the FAF, they must first submit an eligibility application to the Board. Staff members in this program are responsible for reviewing these applications to generally determine if FAF coverage may be extended for a release. If an owner is deemed eligible for reimbursement, that owner may then submit a claim reimbursement application, which staff members review to determine if particular costs associated with the release are reimbursable. The Board may reimburse tank owners for the costs of corrective action through two methods: an installment payment and a settlement payment. Before an installment payment is provided to the tank owner, the tank owner's claim is initially reviewed. At a later date, the claim is thoroughly reviewed and a final settlement is offered.

Funding Source: Fund 691 (a portion of UST fee revenue transferred from the FAF to Fund 691 for the Board's personnel costs)

Line Items: 810-632, PUSTRCB Staff

Implication of Executive Recommendation: The Executive recommends funding of $587,993 in FY 2006 and $610,812 in FY 2007. Funding at the recommended level will allow the Board to cover mandated pay increases and increasing health insurance costs while continuing to provide service at the current levels. To date the Board has received approximately 7,600 applications for reimbursement. About 6,300 of these have been settled or are below the deductible amount and, therefore, review is not required at this time. Applications for reimbursement continue to be received at an average of 65 per

month. Recommended funding will permit staff within this program to continue to work towards reducing the backlog of applications waiting review, thereby decreasing response times while continuing to manage incoming reimbursement requests.

Temporary and Permanent Law Provisions: There are no permanent or temporary law provisions affecting this program.

Reporting and Regulation

Program Description: Reporting and Regulation is responsible for the collection and application of all fees and penalties; maintenance of the general ledger and fee invoice systems; all accounting and fiscal transactions; preparation of all financial statements and related documents; coordination of an annual study of the FAF's estimated claim liability; and coordination of the annual audit.

This program ensures Ohio's UST owners are well informed and in compliance with federal financial responsibility requirements and the rules of the Board and the State Fire Marshal. Staff members in this program determine UST owners' rights to a Certificate of Financial Assurance Coverage. Valid Certificates of Coverage can be issued only to owners demonstrating compliance with regulations. Only holders of a valid Certificate of Coverage can be granted eligibility to receive reimbursement of corrective action costs in the event of a release at an assured site. This program annually issues Certificates of Coverage to more than 3200 owners of about 23,000 petroleum USTs in Ohio.

Funding Source: Fund 691 (a portion of UST fee revenue transferred from the Financial Assurance Fund to Fund 691 for the Board's personnel costs)

Line Items: 810-632, PUSTRCB Staff

Implication of Executive Recommendation: The Executive recommends funding of $487,165 in FY 2006 and $505,846 in FY 2007. Funding at this level will allow the Board to cover mandated pay increases and the increasing cost of health insurance while continuing the current level of service. In addition, recommended funding will allow the Board to hire one additional staff member who will be responsible for the review, determination, and collection of accounts receivable as well as processing refunds for erroneous fee payments. The Board predicts this additional staff position will help reduce the amount of delinquent fees and outstanding refunds.

Temporary and Permanent Law Provisions: There are no permanent or temporary law provisions affecting this program.

REQUESTS NOT FUNDED

The Executive recommends fully funding the Petroleum Underground Storage Tank Release Compensation Board at requested levels.

Agency Fund Group

691 810-632 PUSTRCB Staff

2002	2003	2004	2005 Estimate	2006 House Passed	2007 House Passed
$862,295	$901,027	$940,220	$1,075,158	**$1,075,158**	**$1,116,658**
	4.5%	4.3%	14.4%	**0.0%**	**3.9%**

Source: AGY: Annual tank fees paid by petroleum underground storage tank owners (allocated to this account from the petroleum underground storage tank Financial Assurance Fund)

Legal Basis: ORC 3737.90 and 3737.91 (originally established by Controlling Board in June 1990)

Purpose: Moneys in this fund are used to pay the salaries and other expenses of the staff of the Petroleum Underground Storage Tank Release Compensation Board.

LSC Budget Spreadsheet by Line Item, FY 2006 - FY 2007

Fund	ALI	ALI Title	Estimated 2005	As Introduced 2006	House Passed 2006	% Change Est. 2005 to House 2006	As Introduced 2007	House Passed 2007	% Change House 2006 to House 2007
UST		***Petroleum Underground Storage Tank***							
691	810-632	PUSTRCB Staff	$1,075,158	$ 1,075,158	$ 1,075,158	0.0%	$ 1,116,658	$ 1,116,658	3.9%
Agency Fund Group Total			**$ 1,075,158**	**$ 1,075,158**	**$ 1,075,158**	**0.0%**	**$ 1,116,658**	**$ 1,116,658**	**3.9%**
Total All Budget Fund Groups			***$ 1,075,158***	***$ 1,075,158***	***$ 1,075,158***	***0.0%***	***$ 1,116,658***	***$ 1,116,658***	***3.9%***