

Petroleum Underground Storage Tank Release Compensation Board

House Agriculture and Development Subcommittee

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Legislative Service Commission*

March 27, 2007

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LSC Redbook
for the
Petroleum Underground Storage Tank Release
Compensation Board

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March 27, 2007

Petroleum Underground Storage Tank Release Compensation Board

- No GRF funding
- To date, more than \$165 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 Board is Ohio's response to the 1984 federally mandated requirements established in Subtitle I of the Resource Conservation and Recovery Act (RCRA).

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. According to March 2007 figures, the FAF assures approximately 3,500 UST owners and 22,200 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 \$11.2 million. The obligated balance of approximately \$2.2 million represents the amount the Board anticipates paying for claims reimbursements through the end of FY 2007. An additional \$6.4 million is maintained in the debt service account as restricted investments.

The Board has a current staff of 16 full-time employees who perform the daily operations of the Board. This is expected to remain constant throughout the upcoming biennium.

Executive-Recommended Funding, FYs 2008-2009

The executive recommends funding of \$1,116,658 in FY 2008, which is equal to estimated expenditures in FY 2007. The executive recommendation for FY 2009 is \$1,169,181, an approximate 4.7% increase over the FY 2008 recommendation.

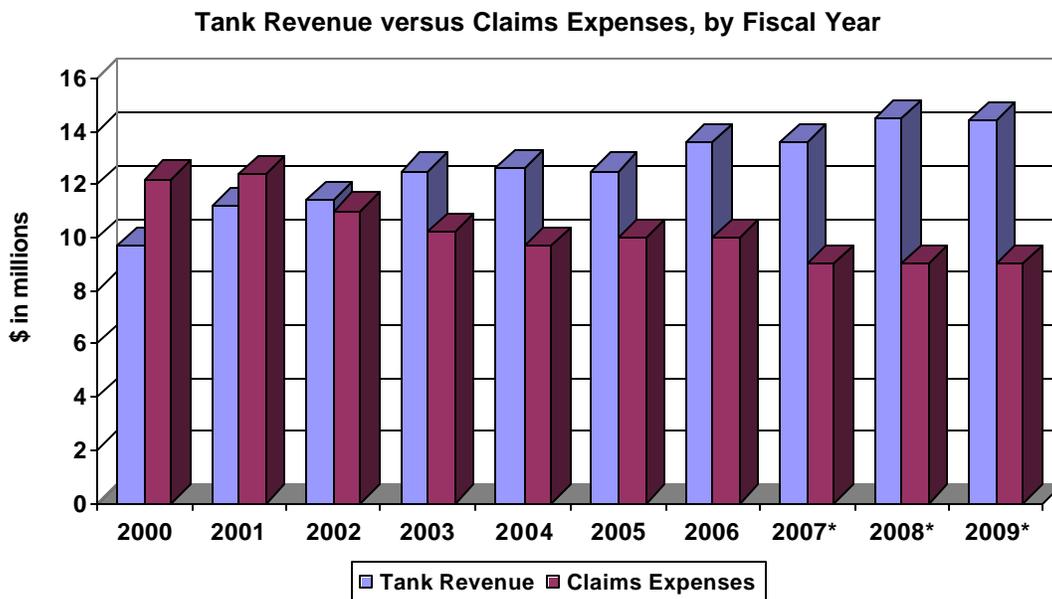
The Financial Assurance Fund (FAF)

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 2007, coverage under the standard deductible of \$55,000 is provided to tank owners at an annual fee of \$600 per tank. Owners of six or fewer USTs may pay an additional fee of \$200 per tank and reduce their deductible to \$11,000 per release. The Board anticipates an estimated \$14.6 million will be collected in UST fees in FY 2007.

Revenue and Claims – Ongoing Changes

The United States Environmental Protection Agency 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 22,200. On average, the Board has received about 80 applications for eligibility in the last five fiscal years. By contrast, an average of 297 applications was received in each of the five years leading up to the 1998 upgrade deadline. 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 2000 to FY 2009, with figures for FY 2008 and FY 2009 being estimates.



Note: FYs 2007, 2008, and 2009 amounts are 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. 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 85% 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. The last review was conducted in November 2006 and as a result, the Board anticipates obligating approximately \$9 million for claims reimbursement payments in both years of the upcoming biennium.

As the focus of the Reporting and Compliance program changed over recent years, sufficient staff was not available to support the reconciliation of owners' accounts and the collection of outstanding fees and, in some instances, refunding overpayments. In the second quarter of FY 2006, the Board created and filled a position with the primary objective of reviewing the more than \$6 million in accounts receivable for certification to the Attorney General's Office for collection and reviewing and issuing the \$1.2 million in pending fee refunds. In FY 2006, approximately \$430,000 was collected in prior year fees and penalties and \$120,000 in erroneous fee payments were returned to owners.

Ongoing Initiatives

In 2002, 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 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 more than 285 claims have been settled, saving over 2,250 personnel hours. 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 2008-2009

Over the past biennium the Board reduced time between a claim submission and reimbursement from about one year to approximately 10 months. However, the number of claims in-house currently pending review has risen from 1,160 to over 1,300. This seemingly contradictory experience is due to a reduction in the number of claims with a submission date preceding August 2006 and an increase in the

number of claims received in the recent months versus the number of claims historically received on a monthly basis. As of March 2007, an average of 82 claims have been received monthly. In the previous five fiscal years, the Board received 66 claims on average per month.

The increase in the average number of claims submitted monthly is due to owners submitting more claim applications with lower face value amounts than in previous years. Submitting claims in this manner helps to ensure compliance with claim filing deadlines and allows the owner to take advantage of the "bundling" of claims in the review process. In April 2005, the Board instituted a rule that allowed it to pay claims on a non first-come-first-serve basis, which has proven to be more efficient. Essentially, when one owner has multiple claims, this "bundle" is now reviewed by staff at one time, thereby reducing the review time.

Staffing Levels

The following table displays the staffing levels of the Board from FYs 2004 through 2007, with estimated levels provided for FYs 2008-2009.

| Petroleum Underground Storage Tank Release Compensation Board Staffing Levels, by Fiscal Year | | | | | | |
|--|-------------|-------------|-------------|-------------|------------------|-------------|
| Program Series/Division | 2004 | 2005 | 2006 | 2007 | Estimated | |
| | | | | | 2008 | 2009 |
| Administration | 3 | 3 | 3 | 3 | 3 | 3 |
| Eligibility & Reimbursement | 6.5* | 6.5* | 6 | 6 | 6 | 6 |
| Reporting & Regulation | 6 | 6 | 7 | 7 | 7 | 7 |
| Totals | 15.5 | 15.5 | 16 | 16 | 16 | 16 |

*The part-time temporary position that began in FY 2004 assisted 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 filled this position again with an ending date of July 2005. This position will not be refilled.

The Board indicates that staffing is currently holding steady. Recommended funding is sufficient to allow all positions to be filled.

ANALYSIS OF EXECUTIVE PROPOSAL

| | |
|------------------------------|--|
| Single Program Series | 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 2008 | FY 2009 |
|---|---------|---------------|--------------------|--------------------|
| Agency Fund Group | | | | |
| 691 | 810-632 | PUSTRCB Staff | \$1,116,658 | \$1,169,181 |
| Agency Fund Group Subtotal | | | \$1,116,658 | \$1,169,181 |
| Total Funding: Petroleum Underground Storage Tank Release Compensation Board | | | \$1,116,658 | \$1,169,181 |

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

- **1.01: Reporting and Compliance**
- **1.02: Eligibility and Reimbursement Determination**

Reporting and Compliance

Program Description: Reporting and Compliance 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 \$506,595 in FY 2008 and \$529,631 in FY 2009, allowing the program to continue at current service levels.

Temporary and Permanent Law Provisions

None

Eligibility and Reimbursement Determination

Program Description: A primary function of the Eligibility and Reimbursement 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 \$610,063 in FY 2008 and \$639,550 in FY 2009. 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 9,350 applications for reimbursement. About 8,000 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

None

REQUESTS NOT FUNDED

The executive recommends fully funding the Petroleum Underground Storage Tank Release Compensation Board at requested levels of \$1,116,658 in FY 2008 and \$1,169,181 in FY 2009.

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Agency Fund Group

691 810-632 PUSTRCB Staff

| 2004 | 2005 | 2006 | 2007 Estimate | 2008 Executive Proposal | 2009 Executive Proposal |
|-----------|-----------|------|------------------|----------------------------|----------------------------|
| \$940,220 | \$971,730 | \$0 | \$1,116,658 | \$1,116,658 | \$1,169,181 |
| | 3.4% | | N/A | 0.0% | 4.7% |

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). The per tank fee is \$600 for a standard \$55,000 deductible. Owners of six or fewer USTs may pay an additional \$200 per tank for a reduced \$11,000 deductible.

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 2008 - FY 2009

| <i>Fund</i> | <i>ALI</i> | <i>ALI Title</i> | <i>2006</i> | <i>Estimated 2007</i> | <i>Executive 2008</i> | <i>% Change 2007 to 2008</i> | <i>Executive 2009</i> | <i>% Change 2008 to 2009</i> |
|---|------------|------------------|-------------|---------------------------|---------------------------|----------------------------------|---------------------------|----------------------------------|
| UST Petroleum Underground Storage Tank | | | | | | | | |
| 691 | 810-632 | PUSTRCB Staff | --- | \$1,116,658 | \$ 1,116,658 | 0.0% | \$ 1,169,181 | 4.7% |
| Agency Fund Group Total | | | --- | \$ 1,116,658 | \$ 1,116,658 | 0.0% | \$ 1,169,181 | 4.7% |
| Total All Budget Fund Groups | | | --- | \$ 1,116,658 | \$ 1,116,658 | 0.0% | \$ 1,169,181 | 4.7% |