



Petroleum Underground Storage Tank Release Compensation Board

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TO: The Honorable Andy Thompson, Chairman, and members of the Finance Subcommittee on Agriculture, Development, and Natural Resources

FROM: Petroleum Underground Storage Tank Release Compensation Board
Starr Richmond, Executive Director
Donald Leasor, Chief Fiscal Officer

RE: Agency Testimony

DATE: February 15, 2017

Chairman Thompson and members of the Subcommittee:

BACKGROUND

The Petroleum Underground Storage Tank Release Compensation Board (Board) and the Financial Assurance Fund (Fund) it manages were created through legislation enacted in 1989 in response to a federal mandate. All petroleum underground storage tank (UST) owners and operators are required to demonstrate \$1 million of financial responsibility to pay for potential damages caused by releases from their tanks. The U.S. EPA has approved Ohio's Fund as a mechanism that meets this federal requirement.

The Board is composed of 12 members, nine of whom are appointed by the Governor, and three ex officio members – the Treasurer of State, and the Directors of the Ohio EPA and Department of Commerce. The Board is a body both corporate and politic; may enter into contracts or agreements for the purposes of administering Sections 3737.90 to 3737.98 of the Revised Code; and must sue or be sued in its own name. Its primary responsibility is the successful management of the Fund for the benefit of not only Ohio's UST owners and operators, but also the health and welfare of the general public through the protection of water resources and improving damaged property.

Under Ohio's statute, the Fund is in the custody of the State Treasurer but is not part of the state treasury. The Fund's assets are generated by annual tank fees paid by UST owners, the proceeds from revenue bonds issued by the Board, if any, and interest income. Moneys in the Fund are used solely to pay claims for the reimbursement of corrective action costs and third-party damages, including bodily injury; to pay the principle and interest on revenue bonds; and to pay the costs of administering the Fund, including personnel costs.

PROGRAM UPDATE

In addition to demonstrating financial responsibility, owners and operators of petroleum USTs were required to bring their equipment and operations into compliance with performance standards set by federal and state laws by December 1998. These performance standards were designed to make the equipment and its use more protective of human health and the environment by, among other things, requiring corrosion protection and leak detection and, on a regular basis, requiring that certain tests be performed to verify the integrity of these systems.

Several predicted outcomes developed from these activities. First, as owners replaced or otherwise brought their USTs into compliance, a significant number of petroleum releases were discovered. To date, almost 5,200 eligibility applications have been received and determinations have been issued for all but 29 of these. In addition, the Board has received 18,150 subsequent claim applications, of which almost 16,700 have been settled or are below the deductible and, therefore, review is not required at this time. Since the inception of the Fund in 1989, over \$244 million has been disbursed for the reimbursement of corrective action costs and based on recent actuarial data, the Board estimates an additional \$15.4 million in costs will be reimbursed for the continued cleanup of 415 releases discovered prior to the compliance deadline. An additional \$17.4 million is estimated to be reimbursed for the 392 active Fund-eligible releases reported between the compliance deadline and June 30, 2016. To date, corrective action work has been completed for about 80% of the sites with Fund-covered releases.

Although the number of Fund-eligible releases with ongoing corrective action work and the number of new releases being discovered has significantly decreased since the compliance deadline, the dollar value and number of claim applications being submitted annually has not changed significantly since fiscal year 2001. In addition, prior to fiscal year 2012 the number of claims submitted on an annual basis outpaced the number of claims settled. However, in the past five fiscal years, by working closely with industry professionals and streamlining the reimbursement process, the number of claims settled has outpaced the number of claims received by an average of five claims per month. Based on pro-forma financial statements prepared in November 2016, it's anticipated that claim reimbursement payments will continue at current levels through at least fiscal year 2021.

Another one of the Board's greatest challenges in its 27 years of existence has been maintaining a Fund balance sufficient enough to cover current and anticipated future reimbursement obligations. In the early days of the Fund, the income from the annual per-tank fee was not sufficient enough to meet these obligations. In order to generate funds to reimburse claims, the Board issued two sets of revenue bonds, totaling \$65 million, and periodically increased the annual per-tank fee. By fiscal year 2011, the Board was in a position to pay off the bonds early, which resulted in a savings of \$2.1 million in interest expense. Following the payoff of the bonds, as annual revenues began to exceed annual operating and reimbursement expenses, the Fund's unobligated balance gradually increased without the need to raise fees or implement a supplemental fee. For fiscal year 2015, following a seven-year period in which the annual per-tank fee amount remained static, the Board reduced the fee for the first time. This reduction from \$600 to \$500 per-tank decreased Ohio's UST owners' cost of compliance by \$2 million

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annually. Subsequently for fiscal year 2016, the Board voted to decrease the annual per-tank fee by another \$100 to \$400 per-tank, further reducing Ohio's UST owners' cost of compliance by an additional \$2 million annually. Based on the reduction of fees over these two fiscal years, the average savings for each owner is estimated to be \$1,275 per year. This reduced per-tank fee amount remained steady for fiscal year 2017 and will continue into the 2018 fiscal year.

As of January 31, 2017, the Fund's unobligated balance is \$25.8 million; an additional \$4.9 million is obligated for the payment of claims through the end of fiscal year 2017. This total of \$30.7 million compares against an estimated liability of \$35.3 million for claim reimbursements to be paid for corrective actions and third party bodily injury and property damage costs associated with releases of petroleum discovered as of June 30, 2016. The estimate of the Fund's liability 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 a low of \$27.7 million in fiscal year 2013.

In 2010, the Board issued letters to several major oil companies alleging that these oil companies filed and settled claims against their insurers for the same environmental clean-up costs for which they sought and received reimbursement from the Fund. Further, the Board alleges that these oil companies failed to advise the Board of their insurance coverage as required and in settling with the insurers, released the Board's rights to subrogate against the insurers. To date, the Board has settled one of these cases, filed two complaints and authorized the filing of two additional complaints. In January 2015, the Board voted to suspend the review and settlement of all claim applications submitted for the reimbursement of costs incurred by a responsible person against whom the Board had authorized the filing of a complaint. This has had a significant impact on the response time between the receipt and settlement of a claim application for those responsible persons against whom the Board has *not* authorized the filing of a complaint. In fact, these claim applications are currently being settled within five to six months of receipt.

In the past six years, a significant amount of key personnel time has been committed to gathering documentation, reviewing data, and performing other similar tasks relative to the investigation of these allegations; meeting with legal counsel and the major oil companies; and participating in mediations and settlement discussions. To better manage the staff's day-to-day workload as well as the additional workload related to this litigation, the Board is currently re-evaluating the duties of its staff. It is anticipated that in the current fiscal year, certain responsibilities currently within key administrative positions will be re-assigned to other staff members and if appropriate, positions will be re-organized and upgraded to include the additional responsibilities related to this complex litigation. In doing so, the Board will be in a position in the upcoming biennium to improve current service levels to Ohio's UST owners while also continuing to seek a resolution with the major oil companies.

In summary, during the current biennium, the Board has worked to develop strategies to reduce the cost of operations and increase efficiencies in delivering its services to Ohio's petroleum UST owners. In addition, it has reduced the annual per-tank fees thereby helping owners reduce their cost of compliance and has continued to work to decrease the length of time owners and operators must wait for the settlement of their claim reimbursement applications thereby helping

many small business owners balance their responsibilities to perform corrective action while maintaining the solvency of their business. In the coming biennium, the Board will continue to seek out additional opportunities to serve Ohio's UST owners. In the long-term, the direction of the program continues to be towards a reduced number of sites undergoing remediation and significantly reduced claims and reimbursement costs.

PROPOSED BUDGET

The budget request before you is for continued funding of 17 full-time positions. The 2018 – 2019 appropriation request is above the approved funding level for fiscal year 2017 due to the 2.5% salary increase to be implemented in fiscal year 2018, the continuing increase in health care costs, the necessary personnel costs to fill all of the Board's positions without vacancies, and to allow for anticipated increases in positions heavily impacted by ongoing complex litigation. As previously stated, all expenses, including personnel costs, are solely financed by fee collections.

Thank you for allowing me to appear before you today and present testimony on the Board and Ohio's Financial Assurance Fund. I am happy to respond to any questions or concerns that you may have.