



Petroleum Underground Storage Tank Release Compensation Board

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TO: The Honorable James Hoops, 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: March 27, 2019

Chairman Hoops 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 5,300 eligibility applications have been received and determinations have been issued for all but 54 of these. In addition, the Board has received 19,550 subsequent claim applications, of which 17,900 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 \$257 million has been disbursed for the reimbursement of corrective action costs and based on recent actuarial data, the Board estimates an additional \$16.7 million in costs will be reimbursed for the continued cleanup of 371 releases discovered prior to the compliance deadline. An additional \$23.2 million is estimated to be reimbursed for the 355 active Fund-eligible releases reported between the 1998 compliance deadline and June 30, 2018. To date, corrective action work has been completed for about 83% of the sites with Fund-covered releases.

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 revenue bonds, totaling \$65 million, and periodically increased the annual per-tank fee. Following the payoff of the bonds, the Fund's unobligated balance gradually increased without the need to raise fees or implement a supplemental fee. After a seven-year period in which the annual fee amount remained at \$600 per-tank, the Board reduced the fee for the first time in fiscal year 2015 and further reduced the fee in fiscal years 2016 and 2019. The total reduction from \$600 to \$350 per-tank has decreased Ohio's UST owners' cost of compliance by \$5 million annually - an average annual savings of \$1,600 per owner.

As of February 28, 2019, the Fund's unobligated balance was \$26.6 million; an additional \$4.7 million is obligated for the payment of claims through the end of fiscal year 2019. This total of \$30.9 million compares against an estimated liability of \$42.6 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, 2018. 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.

Looking forward to the next biennium, there are two significant events that will have an impact on this program. First, effective September 1, 2017, the State Fire Marshal's Bureau of Underground Storage Tank Regulations (BUSTR) amended its UST operational rules to require additional testing of certain UST components and its corrective action rules to require testing for additional chemicals of concern. Although it is too early to know the extent of the impact of

these changes on the Fund, they are anticipated to increase the number of releases identified as well as the cost of clean ups and therefore, are anticipated to increase the number and dollar value of claims against the Fund.

The other item of significance to the Fund is the civil actions currently pending against several major oil companies. The Board has alleged that these oil companies filed and settled claims against their insurers for environmental clean-up costs and in some cases, sought and received reimbursement from the Fund for petroleum releases at these same sites. Further, these oil companies failed to advise the Board of their insurance coverage as required and in settling with their 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. Of the two filed cases, one is set for a jury trial in July of this year and the other has been stayed pending mediation. Regardless of the outcome of this litigation, the impact to the Fund will be substantial.

PROPOSED BUDGET

The budget request before you is solely for the Board's personnel costs. All other expenses are paid directly out of the Financial Assurance Fund by warrant of the State Treasurer. All expenditures of the Board, including personnel, are financed by its fee collections; no General Revenue Fund dollars are part of this budget request. The request will allow for the continued funding of 16 full-time positions and is an increase from the current biennium funding due to anticipated salary increases in fiscal years 2020 and 2021 and the continuing increase in health care costs.

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.