



Petroleum Underground Storage Tank Release Compensation Board

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TO: The Honorable Kirk Schuring, Chairman, and members of the General Government and Agency Review Committee

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

RE: Agency Testimony

DATE: May 1, 2019

Chairman Schuring and members of the Committee:

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, if any; and to pay the costs of administering the Fund, including personnel costs.

PROGRAM UPDATE

In addition to demonstrating financial responsibility, owners of petroleum USTs were required to bring their equipment and operations into compliance with performance standards 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 certain tests be performed to verify the integrity of these systems.

As owners replaced or otherwise brought their USTs into compliance, a significant number of petroleum releases were discovered. To date, over 5,300 eligibility applications have been received and determinations have been issued for all but 63 of these. In addition, the Board has received 19,600 subsequent claim applications, of which 17,900 have been settled or are below the deductible and, therefore, review is not required at this time. Over \$258 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; \$23.2 million for 355 releases reported between the compliance deadline and June 30, 2018; and \$2.7 million for releases discovered but not reported as of June 30, 2018. To date, corrective action work has been completed for about 83% of the sites with Fund-covered releases.

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 cleans ups.

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 failed to advise it of environmental insurance policies under which they settled claims and released the Board's rights to subrogate against the insurers. To date, one of these cases has been settled, two complaints have been filed and two additional complaints have been approved for filing. 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.

PROPOSED BUDGET

The budget request before you is solely for the Board's personnel costs. All other expenses are paid directly out of the Fund by warrant of the State Treasurer. All expenditures of the Board, including personnel, are financed by its fee collections. 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 Fund. I am happy to respond to any questions or concerns that you may have.