




Petroleum Underground Storage Tank Release Compensation Board

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TO: The Honorable Tim Schaffer, Chair, and members of the Senate Agriculture and Natural Resources Committee

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

RE: Agency Testimony

DATE: April 26, 2023

Chairman Schaffer and members of the Senate Agriculture and Natural Resources 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 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. As owners replaced or otherwise brought their USTs into compliance, a significant number of petroleum releases were discovered. Today, the Fund continues to reimburse corrective action costs associated with 167 of these releases.

Over 4,560 determinations granting eligibility to claim against the Fund have been issued to date. In addition, the Board has received 21,780 subsequent claim applications, of which 21,255 have been settled or are below the deductible and, therefore, review is not required at this time. An average of 89 applications for eligibility, 123 requests for cost pre-approval and 557 applications for reimbursement are received annually. Since the inception of the Fund, approximately \$297.9 million has been disbursed to Ohio's UST owners and operators for the reimbursement of corrective action costs and to third parties in compensation for bodily injury and property damage resulting from petroleum releases from USTs.

As of April 21, 2023, the Fund's unobligated balance was \$17.8 million; an additional \$4.3 million is obligated for the payment of claims through the end of fiscal year 2023. This total of \$22.1 million compares against an estimated liability of \$34.3 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, 2022. 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

The other item that continues to be of significance to the Fund is the civil actions that have been ongoing against several major oil companies for several years. The Board alleges that these oil companies filed and settled claims against their insurers for environmental clean-up costs at facilities owned or operated by the oil company and in some cases, sought and received reimbursement from the Fund for costs incurred to clean up 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 four such cases and is continuing legal action in two cases.

In terms of the settled cases, in 2014, Chevron U.S.A. Inc. paid the Board \$2.9 million in exchange for a release and covenant not to sue. In 2019, Phillips 66 paid the Board \$625,000, in exchange for a similar release and covenant not to sue. Also in 2019, the Board and BP Products North America Inc. reached an agreement to settle more than \$26 million of pending claims for reimbursement for \$12.6 million. The settlement payments to BP were made in four installments with the first payment in the 2020 fiscal year and the final payment in the current 2023 fiscal

year. In January 2023, Sunoco, Inc. paid the Board \$3.2 million in accordance with a Settlement Agreement and Release executed in December 2022.

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; no General Revenue Fund dollars are part of this budget request. This request will allow for the continued funding of 16 full-time positions as well as anticipated increases 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.