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# THE UST PIPELINE

News from the Petroleum UST Release Compensation Board

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Volume 16 Issue 2

December 2011

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## BUSTR Rules Update

The Ohio Department of Commerce, Division of State Fire Marshal, Bureau of Underground Storage Tank Regulations (BUSTR) recently adopted several regulations in order to meet the requirements of the Federal Energy Policy Act of 2005. The following is a list of the Ohio Administrative Code (O.A.C.) rules that are affected as well as a brief description of the major changes and new requirements in each rule:

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#### **O.A.C. 1301:7-9-06, Design, construction, installation, operation and maintenance for UST systems.**

Effective May 16, 2011, newly installed USTs must be equipped with secondary containment. In addition, if work is performed on more than 50% of an existing single wall piping run, double wall piping and containments must be installed.

**O.A.C. 1301:7-9-07, Release detection methods and requirements for UST systems.** As of May 16, 2011, daily product inventory control with a monthly reconciliation of that inventory is no longer required. If, due to low fuel levels in the UST, a monthly passing release detection result cannot be obtained from an automatic tank gauging system, owners may use product inventory control as an alternative method of release detection for up to 90 days. Within this 90-day period, owners are to schedule a fuel delivery in order to increase the fuel level in the UST so the automatic tank gauging system will operate properly. In addition, if work is performed on more than 50% of containments, this rule requires sump sensors to be installed.

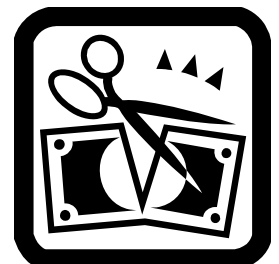
**O.A.C. 1301:7-9-08, Operating requirements for UST systems.** This rule was rescinded. The operating requirements are now included in O.A.C. 1301:7-9-06 and 1301:7-9-07.

**O.A.C. 1301:7-9-18, Delivery prohibition for USTs (new rule).** Following a BUSTR investigation, product deliveries to USTs that are not cathodically protected or are not equipped with spill, overfill, or release detection equipment will be prohibited after May 16, 2011. Fuel delivery to USTs may also be prohibited when the owner and/or operator fails to timely address violations related to the operation or maintenance of cathodic protection, spill, overfill or release detection equipment or fails to obtain a Certificate of Coverage from the Petroleum UST Release Compensation Board. *(Continued on Page 3)*

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## Board Authorizes Ability to Pay Program

At its November 2011 meeting, the Board authorized an "Ability to Pay Program" whereby former owners and/or operators of petroleum USTs experiencing financial difficulty may apply for and receive a determination of their ability to pay delinquent Financial Assurance Fund fees. The determination could result in a write-off or reduction of outstanding fees, including per-tank, late payment and transfer fees, if applicable.



In order to qualify for the program, the responsible person **cannot currently own or operate petroleum USTs** and, if applicable, must have received a determination of no further action from the fire marshal for any release for which eligibility to claim against the Fund was granted. The Corporate and Individual Ability to Pay applications can be found at [www.petroboard.org/forms.htm](http://www.petroboard.org/forms.htm).

## Claim Review Policy Change

Ohio Administrative Code 3737-1-08 requires claims for the reimbursement of corrective action costs to be reviewed on a first-come, first-served basis unless:

1. The State Fire Marshal requests an accelerated review based on the threat posed to human health or the environment by the release that is the subject of the claim;
2. The Board grants an accelerated review based on a demonstration of financial hardship by the person responsible for cleaning up the release; or
3. The director of the Financial Assurance Fund determines that a non first-come, first-served review will increase efficiency and result in cost savings to the Fund.

Beginning in April 2005, this rule also allows the director to prioritize the review of unsettled claims based upon a determination by the State Fire Marshal that no further action (NFA) was required for the subject release. However, this prioritization had the unintended effect of increasing the review response times for claims related to releases that were still being assessed and cleaned up. Consequently, the prioritization of claims based upon a determination of NFA has been discontinued and all in-house unsettled claims are reviewed on a first-come, first-served basis unless one of the exceptions listed above applies.

### Claim Settlements

**Since the Fund's inception in 1989, the Fund has reimbursed \$205 million for costs incurred to assess and remediate petroleum contamination at 2,800 Fund-eligible sites across Ohio.**

**The average cost to clean up a Fund-eligible petroleum release is \$126,625 and the average Fund payout per release after the deductible is applied is \$68,206.**

## Verify Before You Buy



The Board's rules require the payment of *all* Financial Assurance Fund fees before a Certificate of Coverage may be issued for an underground storage tank (UST) system. Consequently, if you purchase a UST system for which fees are outstanding, you may be required to pay the previous owner's outstanding fees, including per-tank and any late payment fees, in order to obtain a Certificate with the Fund.

As the purchaser of USTs, you may wish to consider including any outstanding Fund fees in your negotiations with the seller. For instance, you may agree to pay the outstanding Fund fees in return for a reduced purchase price or alternatively, require the seller to provide proof of payment prior to the sale closing date.

You can verify payment status as well as check the status of the Certificate on the Board's facility inquiry website at [www.petroboardinquiry.org](http://www.petroboardinquiry.org). If fees are outstanding or a Certificate has not been issued, contact the Board's Compliance department at 614-752-8963 or 800-224-4659 (Ohio only) to determine the requirements for obtaining Fund coverage for the UST system.

### 2011 Certificates of Coverage

**As of November 18, 2011, the Board has issued Certificates of Coverage to 2,979 UST owners for 6,144 facilities and 17,974 USTs in Ohio.**

**If you haven't received this year's Certificate, check the status of it at [www.petroboard.org](http://www.petroboard.org) or call the Board's office at 614-752-8963 or 800-224-4659 (Ohio only).**

## BUSTR rules update

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**O.A.C. 1301:7-9-19, Underground storage tank operator training (new rule).** All UST owners and operators must designate and train Class A, Class B and Class C operators for each of their UST sites by August 8, 2012. Although BUSTR intends to offer training in 2012, training is available primarily through private instructors. Please refer to the BUSTR website at <http://www.com.ohio.gov/fire/bustMain.aspx> for the latest information on licensed private instructors and training dates.

- **Class A operators** ensure that appropriate individuals properly operate and maintain the UST systems, maintain appropriate records, respond appropriately to emergencies caused by releases or spills from UST systems at the facility and make financial responsibility documents available to the State Fire Marshal's representative as required.
- **Class B operators** monitor, maintain and ensure that release detection methods, recordkeeping and reporting requirements are met; ensure all relevant equipment complies with performance standards; and ensure appropriate individuals are trained to properly respond to emergencies caused by releases or spills from UST systems at the facility.
- **Class C operators** typically control or monitor the dispensing or sale of petroleum and are responsible for the initial response to alarms or releases associated with the UST system. A Class C operator must be present at an attended facility during the operation of the UST system.



Numerous additional changes were made to the BUSTR rules. Copies of these rules may be found on the State Fire Marshal's website at [https://www.comapps.ohio.gov/sfm/fire\\_apps/fire/petition/](https://www.comapps.ohio.gov/sfm/fire_apps/fire/petition/).



### FAQs Regarding the COC Process

**Q: I received a Notice of Pending Denial. Can I still get a Certificate of Coverage?**

A: Yes! A Notice of Pending Denial ("Notice") is mailed to tank owners who have not satisfied the Board's requirements for the issuance of a Certificate. In simple terms, full payment and/or all information necessary to issue a Certificate was not received by the Board. If the tank owner remits full payment and corrects any deficiencies within 30 days of the Notice, the effective date of the Certificate is the date the payment was received unless coverage must be reinstated with the Fund pursuant to Ohio Administrative Code (O.A.C.) 3737-1-04.1. The requirements for reinstating coverage with the Fund are discussed later in this article.

**Q: I received a Determination to Deny a Certificate of Coverage. Can I still get a Certificate of Coverage?**

A: Yes! A Determination to Deny a Certificate of Coverage ("Determination") is issued when a tank owner fails to provide the documentation requested in the Notice of Pending Denial within the 30-day response period. However, once the Determination is issued, the effective date of the Certificate will be the date the requested documentation is received, NOT the date payment was received. If the owner disagrees with the Determination or believes the requested documentation has already been submitted, the owner may file an appeal to the Determination within 30 days. In most cases, the appeal can be resolved without a hearing and without hiring an attorney. Regardless of whether an appeal is filed, an owner may submit the requested documentation at any time and, if appropriate, a Certificate will be issued. *(Continued on Page 4)*

## COC Process

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**Q: I have not received a Certificate for at least two years and have to reinstate coverage. Can I still get a Certificate of Coverage?**

A: Yes! Owners who have not been issued a valid Certificate of Coverage for a given UST for the prior two or more consecutive years are subject to O.A.C. 3737-1-04.1, Coverage Reinstatement. This rule requires an owner to reinstate coverage with the Fund by demonstrating the subject UST is in compliance with the State Fire Marshal's regulations regarding the operation and maintenance of petroleum UST systems.

### **USTs currently in use or out of service less than 90 days**

An owner reinstating coverage for a UST that is currently in use or has been out of service for less than 90 days must submit:

- All outstanding fees;
- A completed affidavit certifying that either there has been no release or suspected release required to be reported to the fire marshal from the subject UST or any known release is in compliance with the requirements of the State Fire Marshal's Bureau of Underground Storage Tank Regulations (BUSTR);
- Copies of monthly tank release detection records, such as automatic tank gauging records, maintained in compliance with O.A.C. 1301:7-9-07 (E); and
- A copy of the UST Registration Certificate issued by BUSTR.

### **USTs out of service for more than 90 days but less than 12 months**

An owner reinstating coverage for a UST that has been out of service for more than 90 days but less than 12 months must submit:

- All outstanding fees;
- A completed affidavit certifying that either there has been no release or suspected release required to be reported to the fire marshal from the subject UST or any known release is in compliance with the requirements of BUSTR;
- A copy of the out-of-service permit (signed by a certified inspector) that was issued for the subject tank system by the State Fire Marshal or a delegated authority or, as an alternative, a copy of the Inspection Field Report signed and dated by the certified inspector; and
- A copy of the UST Registration Certificate issued by BUSTR.

### **USTs out of service for more than 12 months**

An owner reinstating coverage for a UST that has been out of service for more than 12 months must submit:

- All outstanding fees;
- A completed affidavit certifying that either there has been no release or suspected release required to be reported to the fire marshal from the subject UST or any known release is in compliance with the requirements of BUSTR;
- A copy of the letter issued by the State Fire Marshal or certified inspector with a delegated authority granting an extension to the twelve month out-of-service period; and
- A copy of the UST closure assessment report, if required by BUSTR.

The Board will issue a Certificate of Coverage effective the date all information required to reinstate coverage is received and accepted.

For more information regarding the Certificate of Coverage process, contact the Board's office at 614-752-8963 or 800-224-4659 (Ohio only).

## Submission of Reports and Records

Recently, the Board's staff has received numerous inquiries regarding the submission of applications, supporting documentation, and reports via e-mail in lieu of hard copies. Although e-mail has become a fast and convenient method of transmission, there is a cost to the recipient to print and organize these records. In addition, given the quantity of e-mail being sent and received each day, the likelihood that an e-mail will get "lost in the shuffle" is high. Consequently, hard copies of all applications and supporting documentation are required to be submitted to the Board.