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# THE UST PIPELINE

News from the Petroleum UST Release Compensation Board

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James R. Rocco, Chairman

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## “WHERE IS MY CERTIFICATE OF COVERAGE”

Many owners have experienced significant delays in receiving a Certificate of Coverage with the Fund. Incomplete paperwork, partial payments, and changes in the Board's rules in recent years have the unintended effect of delaying the issuance of Certificates.

First, in response to owners' concerns regarding the duplicate filing of paperwork with the Board and the Bureau of Underground Storage Tank Regulations (BUSTR), in 2002 the Board reduced its filing requirements and consequently, no longer collects tank and piping data. Since only BUSTR now collects this information, the Board's staff reviews BUSTR's data to determine if the tanks are in compliance with the State Fire Marshal's regulations and are, therefore, assurable and able to receive a Certificate. During the first few years of implementing this process, the time required to review and to issue a Certificate increased considerably. Although the process is now well defined and, through joint efforts between the Board, BUSTR, and the Bureau of Testing & Registration, the reliability of the registration data has greatly improved, it continues to require significant oversight and a reliance on accurate reporting by tank owners.

Effective June 30, 2006, changes to the Board's rules imposed additional requirements for transferring a Certificate. As a result, a process was implemented to more timely identify discrepancies in the number of tanks assured at a facility in each program year. The process involves a review of the installation and removal activities at each facility and a comparison to the number of

tanks paid each year. Naturally, with this additional level of review, the time required to review an application for a Certificate has increased.

You can help ensure your Certificate is issued as timely as possible by taking a few extra moments to review your information before mailing your fully completed 2008 Annual Fee Assessment Invoice with payment by July 1. Because an incomplete

form will be returned for completion or may even result in the denial of a Certificate, be certain the Certification of Assurability on page one is signed and a financial responsibility mechanism is selected on the second page. If the “Financial Test of Self-Insurance” mechanism is selected, the affidavit must also be completed and notarized.

Remember, all petroleum USTs must also be registered annually with the Bureau of Testing & Registration by July 1. Not timely registering your tanks will delay your Fund Certificate.

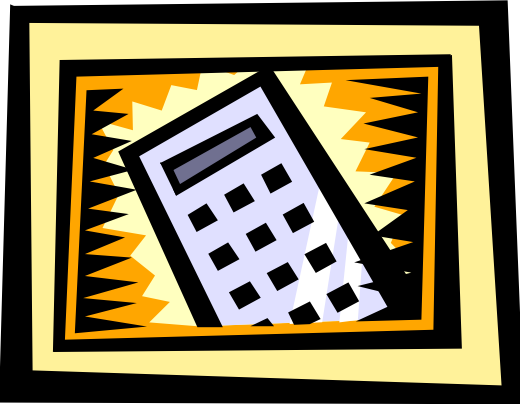
***Before mailing your 2008 Program Year Fee Invoice double-check:***

- The Certification of Assurability was signed (Page 1)
- A Financial Responsibility mechanism was selected on Page 2
- Tank registration was completed with the Bureau of Testing and Registration
- Full fee payment is included

If due to a removal or installation, the number of tanks assured with the Fund has changed, provide documentation with the fee invoice to support the increase or decrease in the number of tanks. For your convenience, Tank Installation/Tank Removal Notification Forms are available on the Board's website at [www.petroboard.com](http://www.petroboard.com).

Lastly, keep in mind that although the issuance of a Certificate may be delayed, the effective date of coverage is only delayed when the requirements for assurability are not met. If you have questions regarding your Certificate, please contact the Board's staff at 614-752-8963.

## THE FEE ASSESSMENT PROCESS



Some owners have or may receive an invoice from the Petroleum Board for prior year outstanding Financial Assurance Fund fees. The fee assessments could date as far back as the inception of the Fund in 1989. Several events in recent years are resulting in the identification and assessment of fees for previously unassured USTs.

The most recent and substantial change resulting in the assessment of prior year fees is the property transfer rule, which went into effect in 2006. In addition to the assessment of a \$500 per facility transfer fee, this rule requires all fees, including late payment fees, to be paid before a Certificate of Coverage can be issued to the purchaser of an UST facility. The rule can have the effect of placing the responsibility for one or more years of unpaid fees on the new owner. In an effort to avoid this unfortunate situation, the Board's staff is reviewing accounts to ensure full payment has been received. These reviews may result in the identification and assessment of fees for previously unassured tanks. Because of this rule change, it is strongly recommended that, besides conducting an environmental property evaluation, potential purchasers of UST facilities contact the Board's staff before initial purchase discussions to verify all fees have been paid and a Certificate of Coverage is in effect for the facility.

Another relatively new change was the addition of an Accounts Receivable Specialist. This individual's focus is the reconciliation of owner's accounts. Although this process may lead to the assessment of outstanding prior year fees, the

result is just as likely to be the identification of overpaid fees. For instance, many owners mistakenly remit fees for program years subsequent to the removal of the tanks or for exempt tanks, such as those used to store heating oil for on-site consumption. Because fees are not due for these tanks, a refund is established and after deducting outstanding fees, if any, for other tanks, a check is issued to the owner.

Lastly, enhancements to the database have provided for more accurate tracking of the installation and removal activity at each facility, and the monitoring and maintenance of open accounts receivable. With these two systems, the number of tanks known to exist at the facility is compared to the number of tanks registered with BUSTR and annually reported to the Fund. As an example, let's look at a tank owner who reported two tanks on the 2003 Annual Fee Assessment Invoice and in 2004, reported and paid for three tanks. If the third tank was installed and received product prior to July 1, 2004, an invoice is created and fees are assessed for the 2003 program year fees. Although this type of analysis has been performed since the inception of the program, the more recent changes in technology have resulted in automated processes, increasing efficiency in the account review process.

The collection of prior year fees begins with the issuance of a fee assessment letter to the owner for the unassured tanks. If an owner does not dispute the assessment of the fees or fails to remit the fees within 30 days, a Notification of Non-Compliance is issued to the owner. If payment is not received within the 30 days of the notice, an Order Pursuant to Law, which assesses late fees of \$100 per tank per month, up to a maximum of \$1000 per tank, is issued. Accounts delinquent more than 30 days after the date of the Order may be certified to the Attorney General's Office for collection. If an account is forwarded for collection, the Attorney General's Office assesses a 10% collection fee and interest.

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Within 30 days after an Order is issued, an owner can formally object to the fee assessment and request an adjudication hearing before the Board's hearing officer. If the matter goes to a hearing, testimony can be offered as to the validity of the assessed fees. The hearing officer will make a recommendation and report the findings of fact and conclusions of law to the Board at its regularly scheduled meeting. The Board then decides to uphold or deny the recommendation of the hearing officer. The Board's decision is appealable to the court system.

Before a hearing, owners may request the account to be reviewed for a reduction in the late payment

fees. Although fees cannot be waived, if good cause exists, late payment fees may be reduced. In addition, interest free payment plans may be established to ease the financial burden a lump sum payment may create for an owner.

In summary, as a result of changes in the Board's rules and processes, and improvements in technology, the Board's staff annually reviews owner's accounts. This account review may result in the assessment of fees, the issuance of a refund check for overpaid fees, and / or requests for more information regarding the installation and removal of tanks. Owners are always encouraged to contact the Board's staff at 614-752-8963 to discuss their accounts.

## Important New Subrogation Rule Amendment

Pursuant to Ohio Revised Code 3737.92(I) and Ohio Administrative Code 3737-1-22, the Board is entitled by subrogation to all rights of the responsible person to recover costs of corrective action, bodily injury or property damage from a third party who caused or contributed to the release of petroleum from an assured UST system.

Unfortunately, there have been instances where the negligence of a third party caused or contributed to an eligible release and this information was not communicated to the Board in the eligibility process. This impairs the Board's ability to recover costs that are subject to its subrogation rights. Therefore, the Board clarified by rule the steps an owner must take to notify the Board when a third party causes or contributes to an eligible release.

Effective April 1, 2008, the rule amendment requires a responsible person to provide written notification to the Board within 30 days of any action by another party that caused and/or contributed to an accidental petroleum release. In addition, if an application for eligibility was previously submitted to the Board and previous notification has not been provided, written notification is required to be submitted by July 1, 2008. Notification is not required if Fund eligibility for the release was not granted.

Failing to notify the Board of the actions of a third party that caused or contributed to a release will result in a 50% reduction in the amount of reimbursable corrective action costs or third-party claim costs eligible to be paid by the Fund.

The Board's subrogation rights protect Fund dollars for reimbursing Ohio's owners for costs associated with accidental petroleum releases and holds negligent third parties that cause a petroleum release responsible for the resulting clean-up costs.

A complete copy of the rule amendments effective is available at [www.registerofohio.state.oh.us/](http://www.registerofohio.state.oh.us/), click on Filing Agency, and browse to the Board's rules at 3737. For a hardcopy, please contact Ellen Mitton at 614-752-8963.



## REIMBURSEMENT OF COSTS TO TRANSITION TO 2005 CORRECTIVE ACTION RULE

With the change in the BUSTR corrective action rules in 2005, many existing corrective actions have transitioned from the 1992 or 1999 corrective action rules. Although the Board expected some increase in costs as a result of owners transitioning corrective actions to the 2005 rule, we are seeing costs for work that duplicates work previously completed under the 1999 corrective action rule. In many instances, a new complete Tier 1 is being performed when much of the work that was done as a part of the previous Tier 1 and Tier 2 evaluations could have been used to satisfy the requirements of the 2005 rules. It is the owner's responsibility to ensure that his consultants are not duplicating work that was completed under previous versions of the BUSTR corrective action rules.

The Fund will reimburse only for costs necessary to transition to the 2005 BUSTR corrective action rule. This work includes the installation of additional soil borings in the source area to evaluate for the presence of TPH; re-sampling of existing monitoring wells if the groundwater data is not current; and costs incurred to meet the new reporting requirements. Based on the results from a Tier 1 source investigation, additional soil borings/monitoring wells may be required to define the vertical and horizontal extent of chemicals of concern in soil and groundwater to the new 2005 delineation levels. These costs are also reimbursable. If you have questions regarding what costs related to transitioning to a new corrective action rule are reimbursable, please contact the Board.

## LONG TIME BOARD EMPLOYEE ANNOUNCES RETIREMENT PLANS

Carol Anne McConnell announced her retirement effective August 31, 2008 after serving over 14 years on the Board's staff.

As the Claims Administrative Assistant, Ms. McConnell has been an integral part of the claims' staff. She oversees the entire claims process - from the time the Application for Eligibility first comes in the door, through the receiving and distribution of the claim packages, the claim review by the claims analyst, requesting settlement payments, sending the claim files off-site and ultimately the destruction of the files. She has always been willing to roll up her sleeves and see a project through to completion.

Ms. McConnell has been the person owners and consultants call with questions about the status of a claim, reimbursement payment, or pre-approval application. She has also assisted the claims analysts by preparing the pre-approvals for review.

Ms. McConnell assisted with the design and debugging of the claims component of the STARRS

(Statistical Tanks and Reimbursement Records System) database. She input claims data into the database and prepared reports for management and the Board.

About her co-workers, Ms. McConnell says, "This is a great staff and I will really miss working with them. There is very little staff turnover and that has really allowed us to develop and work as a team."

In her retirement, Ms. McConnell is planning to spend more time on her hobbies, quilting and crocheting, volunteering for her church and traveling. Her husband, Jim, a retired electrical engineer, says his main duty in retirement is to "Let the dog out, let the dog in." She is looking forward to sharing in those duties.

Carol Anne's knowledge of the claims process, along with her willingness to help with special projects will be sorely missed by the Board and her fellow staff members. The Board and its staff wish Carol Anne a long and happy retirement.