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# THE UST PIPELINE

News from the Petroleum UST Release Compensation Board

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James R. Rocco, Chairman

Starr J. Richmond, Executive Director

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## Board Proposes Administrative Rule Amendments

By Ellen Mitton, Administrative Coordinator

At its June 10, 2009 meeting, the Board voted to amend several of its rules. While many of the proposed amendments are grammatical and editorial in nature, some of the amendments are substantial and are summarized in this edition of the UST Pipeline. See "Proposed Rule Amendments" on pages 2 and 3.

A public hearing will be held regarding the proposed amendments on September 9, 2009, beginning at 10:00 a.m. in the Board's offices located in the LeVeque Tower at 50 West Broad Street, Suite 1500, in Columbus, Ohio. Public testimony may be given at that time. The Board's regular meeting will begin immediately following the public hearing.

### Contact us:

- Phone: 614-752-8963
- Ohio Toll Free Phone: 800-224-4659
- Fax: 614-752-8397
- Email: [info@petroboard.com](mailto:info@petroboard.com)
- Website: [www.petroboard.com](http://www.petroboard.com)

### Also in This Issue:

Cost Pre-Approval Rule Changes - Insert

## Replacing or upgrading USTs?

You may qualify for lower interest rate loans through the Linked Deposit Program

By Don Leasor, Chief Fiscal Officer

If you are planning to upgrade or replace your USTs, you may be eligible to take advantage of the Linked Deposit Program, which was established to increase the availability of lower cost financing. You, your lending institution, the State Treasurer's Office, and the Board each play a role in the Linked Deposit Program.

To qualify for participation in the Linked Deposit Program, you must meet the following criteria:

- Be headquartered in the State of Ohio;
- Own six or fewer tanks exclusively in Ohio;
- Be organized for profit;
- Have a total annual revenue of not more than \$2 million and fewer than 50 employees;
- Apply to an eligible lending institution; and
- Certify that the funds will be used exclusively for the replacement or upgrade of USTs.

See page 3 for additional information about how the Linked Deposit Program works.

## Over 3,100 Facility Certificates Mailed!

To date, the Fund has reviewed and mailed Certificates of Coverage to UST owners for more than 3,100 facilities and 8,000 USTs in Ohio. If you have not received your Certificate for the coverage period of July 1, 2009 through June 30, 2010, see "Certificate of Coverage Issues" by Nicole Johnson, Assurability Coordinator, on page 4.

## Proposed Rule Amendments *(continued from page 1)*

Ohio Administrative Code

### **3737-1-04 – Annual Petroleum Underground Storage Tank Financial Assurance Fee, Certification of Compliance, and Financial Responsibility**

The proposed amendments will eliminate the verification of compliance with the fire marshal's rules prior to the issuance of a Certificate of Coverage. Instead this verification process will be undertaken at the time an application for eligibility to file claims with the Fund is submitted to the Board. All other requirements (payment of all fees, certification of compliance with the fire marshal's rules, and financial responsibility for the deductible) for the issuance of a Certificate will continue.

It's anticipated the Board will adopt the proposed rule amendments at its November 18, 2009 meeting and the rules will become effective on November 30, 2009.

### **3737-1-04.1 – Coverage Reinstatement**

The rule provides the requirements for reinstating coverage with the Fund when a responsible person has not received a certificate for an UST for two or more consecutive years. The proposed change eliminates the requirement for an owner to demonstrate compliance with the fire marshal's rules by submitting monthly leak detection and inventory reconciliation records. Due to the number of property transfers, meeting this requirement has been difficult for many owners. The proposed rule will add flexibility to this process and provides the Fund's director with the ability to use alternative methods in determining an owner's level of compliance with the fire marshal's rules.

### **3737-1-07 – Establishing Fund Eligibility for Corrective Action Costs**

The rule provides the requirements for obtaining eligibility to file claims with the Fund. In addition, after a responsible person is determined to be eligible, the rule requires that person to maintain compliance with UST regulations. If the responsible person fails to maintain compliance with the UST regulations, eligibility with the Fund may be revoked. The proposed changes to the rule clarify that the initial determination of eligibility is based upon a responsible person's compliance with UST regulations at the time the release was suspected or confirmed, whichever was first.

### **3737-1-09 – Limitations of Fund Coverage**

This rule contains a listing of costs that are excluded from Fund reimbursement. Paragraph (A)(4)(d) is being rewritten to clarify that costs incurred as a result of a voluntary site assessment not performed in accordance with the fire marshal's rules are not reimbursable by the Fund. In addition, a change is being made to authorize reimbursement for costs incurred to continue corrective actions for releases for which the fire marshal rescinded the determination of no further action within five years from the date it was originally issued.

### **3737-1-12.1 – Mandatory and Voluntary Pre-approval of Corrective Action Costs**

The rule sets forth the requirements for requesting pre-approval of anticipated corrective action costs. Incurred costs submitted for reimbursement without the proper pre-approval are subject to a reduction in the reimbursable amount. The proposed change will reduce the requirement to seek pre-approval of costs for specific corrective action activities when the estimated costs do not exceed \$6,000. In addition, revised cost estimates must be submitted only when the previously pre-approved costs will be exceeded by 20% or \$6,000, whichever is less, or upon implementation of specific corrective action activities, the estimated costs will exceed \$6,000. A complete discussion of the proposed changes to this rule is available as an insert in this edition of the UST Pipeline.

*(continued from page 2)*

### **3737-1-19 – Establishing Fund Eligibility for Third Party Claims**

The rule sets forth the requirements for the filing and determination of applications for eligibility to file claims with the Fund for compensation to be paid to a third-party for the reasonable costs of bodily injury or property damage resulting from an accidental release of petroleum from an assured tank. The requirements of this rule are similar to the requirements of rule 3737-1-07 discussed on page 2. Therefore, the proposed changes are to ensure consistency with that rule.

### **3737-1-22 – Subrogation**

This rule sets forth the requirements for notifying the Board when another party causes an accidental release of petroleum for which the Board may have subrogation rights. The proposed changes require the responsible person to provide reasonable advance notification to the Board of any settlement meetings and to cooperate with the Board in the enforcement of its subrogation rights by providing documents, testimony, and access to experts relating to the third party that caused or contributed to the release.

**A complete copy of the rule amendments 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 hard copy, please contact Ellen Mitton at 614-752-8963.**

## **Linked Deposit Program** *(continued from page 1)*

### **How the program works:**

As an UST owner, you apply for a loan from an eligible lender. Your lending institution reviews the loan application, and if approved, completes an Application for Participation in the Linked Deposit Program and submits it to the Board. The Board's evaluation of the application is based on several criteria including the economic needs of the area and your financial resources. Once approved, the Board directs the State Treasurer to invest up to \$100,000 from the Fund in a certificate of deposit at your lending institution for a period of up to two years.

After your lending institution receives the Fund's deposit, it is invested at a rate below the current market rate. Your lending institution in turn loans funds to you at a rate that reflects an equal reduction in the percentage of your present borrowing rate. At the end of the deposit period, your lender may, on your behalf, request a one-time renewal for a period of up to two additional years. The term of your loan may exceed the term of the Board's deposit, and upon maturity of the Board's certificate of deposit, your loan interest rate reverts to the original borrowing rate as set by your lending institution.

**Additional information and an application for the Linked Deposit Program may be found on the Board's webpage at [www.petroboard.com/linked.htm](http://www.petroboard.com/linked.htm).**

**For further information on this program contact Don Leasor at 614-752-8963.**

It is important to note that the maximum deposit amount available through the Linked Deposit Program is \$100,000 per owner. The Linked Deposit Program is not a loan, but an investment with lenders for the purpose of providing owners access to reduced cost financing for the replacement or rehabilitation of USTs. In addition, the program does not guarantee financing and the Board accepts no liability for the repayment of the loans.

## Certificate of Coverage Issues

By Nicole Johnson, Assurability Coordinator

On or before May 1 each year, the Fund mails Applications for Certificates of Coverage to each owner of record. The Application assesses the annual per-tank fee and notifies the owner of any known outstanding prior year annual and late payment fees that are due. The Application must be completed and submitted with full payment on or before July 1.

### A Certificate of Coverage is issued and effective when all of the following are complete:

- full payment, including any assessed property transfer and late payment fees;
- certification and demonstration of compliance with the rules of the fire marshal;
- demonstration of financial responsibility for the deductible amount of coverage; and
- if required, compliance with rule 3737-1-04.1 (O-41).

Although Certificates have been issued for over 3,100 facilities, it's unfortunate that many Certificates cannot be issued because these requirements have not been met.

### Common reasons for the delayed issuance of Certificates:

**BUSTR Registration Data:** The Board relies, in part, on the UST registration data obtained from BUSTR. The Board's staff reviews the BUSTR registration data and the owner's certification that this data is correct to make a determination that an UST is in compliance with the fire marshal's rules. If there is a discrepancy, omission, or BUSTR fee payment issue, it will affect the issuance of the Certificate.

Registration data may be reviewed at [www.comapps.ohio.gov/sfm/fire\\_apps/bust/bustr/PublicInquiry.asp](http://www.comapps.ohio.gov/sfm/fire_apps/bust/bustr/PublicInquiry.asp). To have the data corrected or register the USTs, contact the Bureau of Testing and Registration at 614-752-7126 or 877-264-0023 (Ohio only).

**Financial Responsibility:** Owners must indicate on the Application which method of financial responsibility has been established to cover the deductible amount of coverage with the Fund. If the Financial Test of Self Insurance is selected, the affidavit provided with the Application must be signed and notarized. Failure to demonstrate financial responsibility will result in the Certificate being denied.

Additional information regarding the methods for demonstrating financial responsibility is available at [www.com.ohio.gov/fire/BUSTRFinancial.aspx](http://www.com.ohio.gov/fire/BUSTRFinancial.aspx) or by calling BUSTR at 614-752-7938 or 800-686-2878 (Ohio only).

**O-41:** If a valid Certificate of Coverage has not been issued for two or more consecutive years, additional documentation is required. The Board's rule 3737-1-04.1 requires the owner or operator to remit all outstanding annual per-tank and late payment fees; submit an affidavit attesting that a release of petroleum has not occurred or any known release is in compliance with BUSTR's corrective action rules; and submit copies of monthly leak detection and if required by the fire marshal's rules, product inventory reconciliation records. For additional information regarding product inventory reconciliation, refer to BUSTR's guide at [www.com.ohio.gov/fire/docs/fire\\_InventoryControl.pdf](http://www.com.ohio.gov/fire/docs/fire_InventoryControl.pdf).

If you would like to inquire on the status of your Certificate or have questions regarding the requirements, please call Nicole Johnson at 614-752-8963.

**Applications for Certificates of Coverage will continue to be reviewed over the coming months and notifications will be issued to request additional information. Upon receipt and acceptance of all response information, Certificates will be issued and printed on a bi-weekly basis beginning Friday, August 21.**