

# HIGHLIGHTS OF PROPOSED NEW ADMINISTRATIVE RULES



At its February 2003 meeting, the Board approved the Rules Committee's recommendation to propose a new subrogation rule, to rescind the requirement for eligible owners to submit annual cost estimates, and to amend several other rules for clarification purposes. The proposed rules can be obtained by calling the Board's office at 614-752-8963 or by going to the Register of Ohio web site [www.registerofohio.state.oh.us](http://www.registerofohio.state.oh.us) and clicking on browse proposed rules by agency. The Board is listed under 3737.

## HIGHLIGHTS

The new subrogation rule clarifies an owner's responsibilities where another party has caused or contributed to an accidental release of petroleum from an assured UST system and the owner is eligible for reimbursement from the Fund. Under Ohio law, the Board is entitled to the same rights that the owner has to recover costs for corrective action and/or third-party bodily injury or property damages from another party. What this means is that the owner cannot recover corrective action costs from both the Fund and another party. It also means that the Board has the right to pursue another party for corrective action costs paid by the Fund to the owner, if the act of the other party caused or contributed to an accidental release of petroleum. The new rule clarifies an owner's obligations to the Board and states that a settlement between the owner and another party does not prohibit the Board from asserting its subrogation rights against the other party. Failure to comply with the new rule can result in reduced reimbursement.

In a recent case an owner and the Board jointly sued a third-party responsible for tank damage and a subsequent large release of fuel. The resulting settlement allowed the owner to recover a large portion of their costs and the Board was able to recover \$250,000 for work being done at this site. Working together, this owner and the Board reduced the Fund's costs at this site that would have otherwise been paid from tank owner fees.

The annual cost estimate and completion schedule rule is being rescinded. Now, only owners with long-term corrective action costs will be required to submit annual cost estimate and completion schedules.

Proposed amendments for 3737-1-16, Third-Party Claims, require an owner to notify the Board within 30 days of being notified of potential third-party damages and to keep the Board informed of any actions involving a third-party including negotiation, mediations, settlements or judgments. Any settlement must be reasonable and the Board would not reimburse what will be paid by an owners or third-partys insurance coverage.

Amendments to 3737-1-09, Limitations of Fund Coverage, include a requirement that owners and/or their consultants must provide documentation for a claim before the settlement is issued. The Board will advise an owner of any undocumented costs and request additional information. If the information to document the costs is not provided to the Board within 90 days of the request, the undocumented costs will not be eligible for reimbursement.

### TANK FEES AND DEDUCTIBLES TO REMAIN THE SAME

The Board also determined to maintain fees and the deductible amounts at their current levels for the upcoming 2003 program year. The per tank fee for the 2003 program year will remain at \$450 for the standard deductible of \$55,000 and \$600 for the reduced deductible of \$11,000.

However claim submittals continue to remain at a high level and tank fees are directly related to corrective action costs. If costs for corrective action are not cost effectively managed, tank fees are adversely affected for all tank owners, not just those performing cleanups.