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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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## Board Votes to Maintain Per-Tank Fees

At its November 10, 2010 meeting, the Board voted unanimously to maintain fees and deductible amounts at the current levels for the upcoming 2011 program year. The fees will remain at \$600 and \$800 per-tank for the \$55,000 and \$11,000 deductible amounts, respectively.

At these fee levels, over a period of several years, the Fund's cash-on-hand grew to \$28.4 million as of June 30, 2010. As part of its long-term strategy to maintain the viability of the Fund, the Board voted to use this cash to pay off \$21.3 million in revenue bond debt. Since the Fund is financed solely by fees from UST owners and operators, the early payoff of this debt saved Ohio's owners and operators \$2.1 million in interest payments that would have been required if the bonds were held until they fully matured in August 2013. As expected, redeeming the bonds early resulted in a substantial decrease in the Fund's cash balance. However, based upon the most recent five-year financial projections and current trends in claim submissions and reimbursement payments, it is anticipated claim reimbursement payments will continue at approximately \$9 million per year through at least 2016 without an increase the annual per-tank fee amount. The Board annually updates its financial projections and reviews and sets the per-tank fee amount. Based upon unforeseen developments, the Board could find it necessary to adjust the per-tank fee amount in the future.

The Fund was created in 1989 and in the past 22 years, it has remained viable and solvent. Due to the Board's sound fiscal management and the support of Ohio's owners and operators, the Board has not had to raise the per-tank fee since the 2005 program year. In addition, the deductible amounts have remained at the same levels since the 1993 program year.

## Protecting Your Fund Eligibility

The Board's rules require an application for eligibility to claim against the Fund to be submitted within one year of the date the suspected release or release, *whichever is first*, was required to be reported to the State Fire Marshal's (SFM) office. Failure to timely recognize and report a suspected release can result in the denial of eligibility for the reimbursement of corrective action costs associated with a release of petroleum from your UST system.

In a recent case on appeal before the Board, a tank owner failed to timely recognize and act on inconclusive and failing automatic tank gauging (ATG) test results. Approximately 60 days after an inconclusive ATG test result and 45 days after a failed ATG test result, the owner took steps to identify the source of an increase in fuel usage experienced during the previous several weeks. As part of this investigation, the owner performed a reconciliation of the fuel inventory and based on the results of that reconciliation, reported a suspected release to the SFM. Approximately 30,000 gallons of diesel fuel were released from the UST system in less than three months! *(Continued on Page 3)*

### Also in This Issue:

- Cost Pre-Approval Request Rule Revision *(Page 2)*
- Board Welcomes New Employee *(Page 2)*
- Board Welcomes New Ex-Officio Members *(Page 4)*
- Unclaimed Funds *(Insert)*

## Cost Pre-Approval Request Rule Revision

A revision to the cost pre-approval rule this past year relaxed the mandatory pre-approval requirements for certain tasks in which the estimated costs are within a range considered to be typical. This revision lessens the burden on Ohio's UST owners because it eliminates the need to submit cost pre-approval applications for certain pending corrective actions when the estimated cost does not exceed \$6,000. These corrective action activities include: Tier 3 evaluation plans, Tier 2 fate and transport calibration plans, and monitoring plans when proposed in conjunction with a tier evaluation report.

Another revision to this rule lessened the requirements for submitting revised cost estimate and completion schedules for pre-approval. This revision requires revised estimated cost and completion schedules to be submitted *only* when the actual costs will exceed the previously pre-approved amount by 20% or \$6,000, whichever is less. In addition, where a revised cost estimate

schedule is submitted for pre-approval, rather than evaluating the schedule for appropriate costs, the director may notify the responsible person that the costs will be evaluated when the costs are submitted for reimbursement.

As a result of these rule revisions, based on a three-year average of prior submissions, the Board has experienced a 20% reduction in the number of requests for monitoring and calibration work plan estimated costs and a 38% reduction in the number of requests for voluntary pre-approval of estimated costs. Not only have these changes allowed the Board's staff more time to focus on the review and reimbursement of claimed costs, but it allows owners and their consultants to promptly proceed with corrective action.

The Board continues to require an estimated cost and completion schedule to be submitted, regardless of the amount, for the following: interim response actions where prior approval of the State Fire Marshal must be obtained; remedial action plans; free product removal where recovery has been in place for one year; and annual Remedial Action Plan and Free Product Recovery activities.

## Two Applications, One Deadline

The Board's rules require a responsible person (owner or operator) to file an application for eligibility within one year from the date the suspected release or release, whichever is first, was required to be reported to the fire marshal. In a very similar manner, a claim application for the reimbursement of immediate corrective action costs is required to be submitted within one year of the date the release was required to be reported to the fire marshal. To receive full reimbursement of eligible corrective action costs associated with a release, all claim-related applications must be timely submitted. An extension to the filing deadline cannot be granted, regardless of whether a determination of eligibility has been issued. Don't wait until the deadline! File an application for eligibility and all claim reimbursement applications as early as possible.



## Board Welcomes New Employee

Cynthia Knight joined the Board's staff in January 2011 as the Compliance Analyst. In this role, she is responsible for reviewing the Applications for Certificate of Coverage, recommending the issuance and denial of Certificates, and responding to owners' and operators' questions regarding coverage with the Fund. Prior to coming to the Board, Cindy worked for Provest, LLC, one of the nation's largest legal support services firms, as a branch manager. She was responsible for human resources administration and the development of strong relationships with the surrounding courts. Cindy earned an associate's degree in paralegal from the Academy of Court Reporting.

## Protecting Eligibility

(Continued from Page 1)

An application for eligibility to claim against the Fund was filed within one year of the date the owner reported the release to the SFM. However, the release was *first* suspected when the ATG system produced an inconclusive test result and this event was required to be reported to the SFM within 24 hours, unless the ATG system was found to be defective and was repaired. Although the Board received the application for eligibility within one year of the actual report date, the Board's rules require the application to have been filed within one year of the date the suspected release was *required* to be reported or, in this specific case, within one year and 24 hours of the date the ATG system produced the inconclusive test result.

The owner's application for eligibility was denied for several reasons, including failure to inspect the ATG system each month to confirm the system produced a passing test result; failure to maintain daily product inventory control and perform a monthly reconciliation of that inventory; failure to timely report a suspected release; and lastly, because the suspected release was not promptly recognized and addressed, the owner incorrectly calculated the deadline for filing the application for eligibility and consequently, the application was not

timely filed. At its November 2010 meeting, the Board upheld the denial of eligibility.

Ohio Administrative Code (O.A.C.) 1301:7-9-13(C)(34) defines a suspected release to mean evidence of a release obtained through a failed or inconclusive test result from an ATG system, unusual operating conditions, or physical discovery of a release. Further, O.A.C. 1301:7-9-08(F) requires owners to inspect an ATG system each month to confirm the system produced a passing test result. If the system produces an inconclusive or failed test result, the monthly ATG test must be performed until a passing result is achieved or the ATG system is found to be defective and is repaired. If a passing result cannot be obtained, a release is suspected and subject to the reporting requirements of O.A.C. 1301:7-9-13(D).

ATG systems are only effective when tank owners and operators monitor the results and promptly take action to investigate and resolve all inconclusive and failed test results. Failing to inspect the results of the ATG system or ignoring a failed or inconclusive test result could have a very costly outcome – loss of Fund reimbursement for corrective action costs to clean up a release. If you suspect a release, protect your Fund coverage by timely reporting it and filing an application for Fund eligibility as early as possible.

### Did You Know...

- Fees are required to be paid for each tank comprising a compartmentalized underground storage tank system?
- The reduced \$11,000 deductible is only available to the owner or operator if the owner and the operator own and/or operate six or fewer petroleum USTs?
- Incomplete applications are accepted and the date the application is received is the date used to determine 1) the effective date of a Certificate of Coverage; 2) if an application for eligibility was timely submitted; and 3) if the costs were timely filed for reimbursement?
- Interest free payment plans are available to owners and operators with outstanding prior year fees?
- The purchaser of an UST system has 30 days from the date of purchase to transfer an existing Certificate of Coverage into the purchaser's name?
- The Board's staff is here to help you?



## Petroleum Board Welcomes New Ex-Officio Members

Governor John Kasich named two new cabinet members who sit as ex-officio members on the Petroleum UST Board. David Goodman was named as the Director of Commerce and Scott J. Nally was named as the Director of the Ohio Environmental Protection Agency. Newly-elected State Treasurer Josh Mandel is also an ex-officio member of the Board.



Governor John Kasich appointed **David Goodman** as Director of the Ohio Department of Commerce, effective January 10, 2011.

Director Goodman had just completed his second full term as a State Senator representing citizens in Franklin County when he was appointed to the Governor's Cabinet.

The Ohio Department of Commerce is one of the state's chief regulatory agencies. The department regulates state-chartered financial institutions, mortgage brokers and loan originators, securities, real estate brokers and appraisers, the state fire code, liquor control, construction compliance, minimum and prevailing wages, unclaimed funds, underground storage tanks, elevators and video-service providers.

Born in Bexley, Ohio, Director Goodman began his career in public service as an Assistant Attorney General for the State of Ohio. In 1995, he ran for and was elected to the Bexley City Council. In 1998, he was appointed to serve the remainder of an unexpired term in the Ohio House of Representatives and was elected to a full term later that year.

Director Goodman is a graduate of Bexley High School, Miami University and the Case Western University College of Law.



Governor John Kasich appointed **Scott J. Nally** as the Director of the Ohio Environmental Protection Agency, effective January 10, 2011.

Director Nally comes to the Ohio EPA with more than 20 years of public and private environmental management experience.

He spent the last six years as a senior manager at the Indiana Department of Environmental Management (IDEM). Prior to IDEM, he worked in the environmental field in the private sector for more than 15 years.

The Ohio EPA is responsible for implementing federal and state regulations to protect human health and the environment while ensuring the environmentally sound operations of business and government activities imperative to economic growth.

Director Nally has a bachelor's degree in biological sciences from North Carolina State University and a master's degree in science from the University of Wyoming.



**Treasurer Josh Mandel** was sworn in as the 48<sup>th</sup> Treasurer of the State of Ohio on January 10, 2011. Treasurer Mandel is a Marine Corps veteran who served two tours in Iraq and as a State Representative.

During his four years in the General Assembly as a State Representative from the 17th Ohio House

District, Treasurer Mandel devoted a great deal of energy toward the issues of fiscal discipline, improving the state's business climate and reversing the exodus of young people from Ohio.

Treasurer Mandel's previous elected experience includes service as a Lyndhurst City Councilman, where he was elected in 2003 with more votes than any candidate for Council or Mayor.

He holds a bachelor's degree from The Ohio State University, a law degree from Case Western Reserve University, and has completed the Investment Decisions & Behavioral Finance program at Harvard University.