

SETTING THE ANNUAL FEE

The Board approved a rule amendment that will increase the annual tank fee for the upcoming 2000 program year. No change will be made for the deductible amounts. A public hearing was held on January 5, 2000 regarding the increase and upon completion of the rule review process, the annual tank fee will be \$400 per tank for the \$55,000 deductible and \$550 for the \$11,000 deductible.

From time to time the Board has been asked whether there are other ways to finance the Financial Assurance Fund, including taxes paid by users of petroleum products. Prior to legislation creating the Fund, a number of funding mechanisms were examined in depth.

When these funds were being created across the country, many states chose gas tax as a means of financing. However, Ohio is precluded from using any form of gas tax as a means to finance our Fund. Article 12 Section 5a of the Ohio Constitution provides that any monies derived from gas taxes or associated fees, (i.e. license plate fees, truck fees, etc.) can only be spent for highway purposes. Environmental fees and other taxes were also investigated. However, any fee or tax assessed for petroleum related activities or auto usage would be considered a gas tax. This narrowly written provision has been upheld in numerous court cases. A constitutional amendment would be required to provide funding for other than what the Constitution allows.

Therefore, it was necessary to create a self-financing plan to satisfy the federal financial responsibility requirement. An annual per tank fee was assessed against all owners of petroleum USTs. The Board was also authorized to issue revenue bonds to generate capital and is permitted to keep all interest earned from its investments to be used to reimburse corrective action costs.

The Board's ability to issue revenue bonds was challenged but upheld by the Ohio Supreme Court. The Court's decision was in large part due to the fact that it determined the annual tank fee was indeed a fee and not a tax because it was only assessed against tank owners and not the general population. Had the Court determined the tank fee to be a tax, the Board would have been precluded from repaying the bonds with tank fees by Article 8 of the Constitution. Therefore, the key element in the original financing plan and a major source of capital for the Fund would not have been available.

The Board has used bond sales to spread the costs of financing claim reimbursements over time, much like a home mortgage. In turn, this has allowed the Board to set moderate fees and gradual increases, buffering the economic shock to businesses and individuals who must pay them. However, payment of the bond debt and the satisfaction of bond covenants is a major component in the setting of the annual tank fee.

The Board also takes other measures to maintain reasonable tank fees. For example, the Board has passed rules setting time limits in which to submit eligibility and claim applications. Such time limits protect the Fund from stale claims that are difficult and sometimes impossible to verify. The Board also requires mandatory cost pre-approval of certain program tasks which assist the Board in controlling costs. Claims are reviewed to ensure that claimed costs are for necessary corrective action and are typical based upon the Board's experience. In addition, the Board has worked with the Bureau of Underground Storage Tank Regulations ([BUSTR](#)) in an attempt to control corrective action costs through cost-effective clean-up technologies.

While it is obvious that financing alternatives for the Fund are limited, the Board has taken an aggressive approach in controlling costs. With these cost control measures in place, the Board is able to maintain affordable tank fees and continue to timely reimburse owners for the costs of corrective action.