

Supreme Court Upholds Eligibility Filing Deadline

The Ohio Supreme Court recently upheld a Board rule ([O.A.C. 3737-1-07\(A\)\(1\)](#)) that sets a time limit on when Fund eligibility applications may be filed. The rule requires persons seeking reimbursement from Ohio's Petroleum Fund to file an eligibility application within one year from when they had to report their petroleum release to the State Fire Marshal. Owners who file late are denied coverage. In *Amoco v. Petroleum Underground Storage Tank Release Compensation Board* (Case # 99-1481, August 30, 2000), the Court stated that the rule is "necessary and appropriate for the Board to administer the Fund." *Amoco* at page 9.

Amoco arose after separate tank owners, from Montgomery and Sandusky County, were denied eligibility under the rule and brought appeals in their respective common pleas and appellate court jurisdictions. The Second and Sixth District Court of Appeals heard arguments concerning the rule and reached conflicting decisions about its validity. Because of the conflict, the Ohio Supreme Court accepted jurisdiction over the issue.

The Court considered the following arguments made by tank owners seeking to invalidate the rule: (1) the rule is not necessary and appropriate to the administration of the Fund; (2) the rule conflicts with the Ohio Revised Code; and (3) the rule violates public policy. All three of these arguments were rejected.

First, the Court stated that the rule is necessary and appropriate because it assists the Board's Director in determining whether a release came from a tank for which a valid certificate of coverage was possessed.

The Court noted that the passage of time makes tracing the source of a petroleum release difficult because releases diffuse with time. If too much time has passed from when the release is discovered and when an eligibility application is submitted, it can become impossible to determine which tank is the source of the release. Since the rule puts a time limit on how long a person may wait before submitting an eligibility application, it helps solve this problem. The Court also noted that the rule assists PUSTRCB in budgeting Fund expenditures because it compels persons to file their eligibility applications well in advance of when they will file claims for specific costs. This information allows the Board to gradually increase fees, if necessary, in preparation for future anticipated expenses.

Next, the Court held that the rule does not conflict with the Ohio Revised Code. It stated that there "are no statutorily set time limitations in R.C. Chapter 3737 that pertain to the eligibility application. Thus [the rule] does not impermissibly add to, or conflict with the General Assembly's legislative enactment addressing USTs, it merely provides a time limitation that is within the Board's rule making authority." *Amoco* at page 8.

Finally, the Court held that the rule does not violate public policy. The Court noted that while the rule will occasionally preclude otherwise eligible tank owners from receiving reimbursement, the overall benefits from the rule are necessary and appropriate to administer the Fund. It also noted that complying with the rule is an easy task in light of the fact that there is no filing fee, the application is short, and tank owners have approximately one year to file.

The *Amoco* decision should help the Board in maintaining the solvency of the Fund and in assuring that eligibility is granted only for those tanks for which a valid certificate of coverage was possessed. The Board must be able to effectively project its liability and expenses in order to estimate the revenues that will be required and protect the Fund from unanticipated, ineligible and/or fraudulent claims. The Fund's members expect the Board to do everything in its power to provide protection from sudden, unexpected fee increases caused by sudden, unexpected liabilities.

Owners seeking Fund reimbursement should be mindful of the deadline for filing an eligibility application and should be mindful of deadlines associated with filing claims as well. Compliance with these time limits can be the difference between reimbursements and denials.