FACT SHEET

FINANCIAL RESPONSIBILITY GUIDELINES

Financial responsibility is similar to mandatory automobile insurance. Like owners of automobiles, owners and operators of petroleum underground storage tanks (USTs) must assure that they will have the financial wherewithal to pay for the damage their USTs may cause.

Financial responsibility means that if you own or operate a petroleum UST in Ohio, you must ensure, in ways that are spelled out in section 1301:7-9-05 of the Ohio Administrative Code (OAC), that there will be money available to help pay for the costs of third-party liability claims, and the necessary corrective actions resulting from a leak from your tank. These costs may include cleaning up leaked petroleum, correcting environmental damage, supplying drinking water, or compensating people for personal injury or property damage.

WHO MUST SHOW FINANCIAL RESPONSIBILITY?

Either the owner or the operator of a petroleum UST must meet the requirements of the financial responsibility rule. If the owner and operator are different individuals or businesses, it is the responsibility of the owner and the operator to decide which will show financial responsibility. If neither one shows financial responsibility, both are in violation of the law and may be liable for the penalties of noncompliance with OAC 1301:7-9-05. The federal government and its agencies that own USTs are not required to document financial responsibility. Local and state government agencies, however, must comply with the rule.

WHAT ARE THE REQUIREMENTS?

To satisfy Ohio's financial responsibility requirements, all petroleum UST system owners and operators must do **two** things:

- Participate in the Ohio Financial Assurance Fund (as administered by the Petroleum UST Release Compensation Board) to obtain coverage above a deductible amount. The standard deductible is $55,000; owners of six or fewer tanks may pay a higher premium to obtain a reduced deductible of $11,000.

- Demonstrate financial responsibility for the amount of the deductible by using one of the mechanisms cited in OAC 1301:7-9-05. Owners/operators must prepare and maintain (at all times) a copy of their financial responsibility mechanism. **The rule describes six financial responsibility mechanisms that any tank owner may use. OAC 1301:7-9-05 must be reviewed for the specific requirements of each.** A very brief description of the six mechanisms follows:

    1. **<u>Test of Self-Insurance</u>.** Owners/operators must demonstrate tangible net worth, using financial statements that satisfy the rules strict criteria. Minimum net worth necessary for most small tank owners: $110,000 or $550,000 depending on the deductible chosen. Owners/operators must pay deductible amount if corrective actions are necessary.

    2. **<u>Insurance or Risk Retention Group Coverage</u>.** Owners/operators must obtain coverage for an annual aggregate amount set by the rule. Minimum aggregate for most

small tank owners: $22,000 or $110,000 depending on the deductible chosen. Insurance company (via the insurance policy) pays the deductible amount if corrective actions are necessary.

3. **Guarantee and Standby Trust Fund.** Owners/operators must obtain a guarantee from an insurance company. A stand-by trust must be obtained from a financial business licensed to conduct trust business in Ohio. Owners/operators are required to pay a deductible amount if corrective actions are needed. If the State Fire Marshal (SFM) determines that neither the owner nor operator is initiating corrective actions in a timely manner, the guarantor deposits funds into the stand-by trust, which is payable to the SFM. Minimum amount of guarantee for most small tank owners: $11,000 or $55,000 depending on the deductible chosen.

4. **Surety Bond and Standby Trust Fund.** Owners/operators must obtain a surety bond from an organization that writes surety bonds. A stand-by trust must be obtained from a financial business licensed to conduct trust business in Ohio. Owners/operators are required to pay a deductible amount if corrective actions are needed. If the SFM determines that neither the owner nor operator is initiating corrective actions in a timely manner, the surety company deposits funds into the stand-by-trust, which is payable to the SFM. Minimum amount of surety for most small tank owners: $11,000 or $55,000 depending on the deductible chosen.

5. **Letter of Credit and Standby Trust Fund.** Owners/operators must obtain a letter of credit from a financial institution. A stand-by trust must be obtained from a financial business licensed to conduct trust business in Ohio. Owners/operators are required to pay a deductible amount if corrective actions are needed. If the SFM determines that neither the owner nor operator is initiating corrective actions in a timely manner, the financial institution that issued the letter of credit deposits funds into the stand-by trust, which is payable to the SFM. Minimum amount of letter of credit for most small tank owners: $11,000 or $55,000 depending on the deductible chosen.

6. **Trust Fund.** Owners/operators must obtain a trust fund from a financial business licensed to conduct trust business in Ohio. Owners/operators are required to pay a deductible amount if corrective actions are needed. If the SFM determines that neither the owner nor operator is initiating corrective actions in a timely manner, the SFM draws upon the monies in the trust fund. Minimum amount of trust fund for most small tank owners: $11,000 or $55,000 depending on deductible chosen.

Four mechanisms were added to OAC rule 1301:7-9-05 on January 1, 1994, for use only by the State of Ohio or political subdivisions. Owners/operators must prepare and maintain (at all times) a copy of their financial responsibility mechanism. The four mechanisms are:

1. **State or Political Subdivision Bond Rating Test**. Owners/operators must establish eligibility to use this mechanism by presenting evidence of outstanding issues of at least $1 million in general obligation bonds rated by Standard & Poor's as AAA, AA, A, or BBB investment grade, or rated by Moody's as Aaa, Aa, A, or Baa investment grade.

2. **State or Political Subdivision Financial Test**. Similar to the Test of Self Insurance available to private entities owning tanks. Owners/operators must complete a financial worksheet that recognizes the unique financial structure of government entities and obtain a satisfactory score.

3. **Political Subdivision Guarantee**. Political subdivisions may obtain a guarantee from the State of Ohio or another political subdivision with which it can demonstrate a substantial governmental relationship.

4. **State or Political Subdivision Fund**. Owners/operators may administer a dedicated UST response fund if appropriate safeguards are met. Three options are available:

   - Dedicate a fund equal to the deductible ($11,000 or $55,000) to be used only to clean up a petroleum release from an UST.
   - Dedicate a fund equal to five times the amount of the deductible for emergencies, including UST-regulated emergencies.
   - Dedicate a fund in the amount of the deductible to be used only to clean up a petroleum release from an UST. A payment must be made to the fund once every year for seven years until it is totally funded.

The specific requirements concerning the use of all ten mechanisms are set forth in OAC rule 1301:7-9-05, and brief descriptions of each mechanism are included in the *Financial Responsibility Guide* (available from BUSTR at no charge). In deciding which of these mechanisms to use, you may want to contact your financial advisers (i.e., accountant, insurance agent, lending/financial agent, etc.). Take the *Financial Responsibility Guide* with you if you go to see them, since they may want to see the text of OAC rule 1301:7-9-05, which has some very specific technical requirements. Since your choice of a financial mechanism is so important, you may want to consult with more than one person or institution for help and advice. Owners/operators must have a financial responsibility mechanism in place at all times.