



Ohio Department of Commerce

Division of the State Fire Marshal

**Bureau of Underground Storage
Tank Regulations (BUSTR)**

**Brownfields & Responsible Party
Determinations**



The BUSTR Program

- BUSTR was established as part of the State Fire Marshal's Office in 1987
- In Ohio, BUSTR has exclusive jurisdiction in regards to releases of petroleum from regulated USTs
- Currently, there are 22,839 registered USTs at 7,864 active facilities in Ohio (majority are gas stations)



USTs NOT regulated by BUSTR:

- **Farm and residential tanks of 1,100 gallons or less** capacity holding motor fuel used for noncommercial purposes
- **Tanks storing heating oil** used on the premises where it is stored
- **Tanks on or above the floor of underground areas**, such as basements or tunnels
- **Septic tanks** and systems for collecting storm water and wastewater
- **Tanks of more than 110 gallons or less capacity**
- **Emergency spill and overfill tanks**



Voluntary Corrective Actions

- ❑ BUSTR does not have an equivalent Voluntary Action Program (VAP) like Ohio EPA
- ❑ BUSTR does not issue Covenants Not to Sue
- ❑ BUSTR requires volunteers to assess and clean up petroleum releases to the same standards as a responsible party
- ❑ BUSTR issues No Further Action letters (NFAs)



**Brownfields Funding
& BUSTR
(USEPA's Brownfields
Grants)**



Brownfields Funding Eligibility

- Site eligibility is determined differently for sites containing petroleum versus sites contaminated with hazardous substances.
- Eligibility of hazardous substance sites is focused largely on the applicant's potential liability under CERCLA.
- Brownfield Law outlines specific, distinct criteria for petroleum sites

Eligibility Criteria

For petroleum contaminated properties to be eligible for funding, the following is required:

1. The site is of “relatively low risk” compared to other “petroleum-only” sites in the state

 There is no viable responsible party (RP)

 The site will not be assessed, investigated, or cleaned up by a person that is potentially liable for cleaning up the site

 The site is not subject to a corrective action order under RCRA §9003(h)

See USEPA Guidelines for Brownfield Grants, Appendix 1, Section 1.3.2



Brownfields Law

- If a party is identified as being responsible for the petroleum release and that party is financially viable, then the site is not eligible for brownfields grant funds.
- Generally, petroleum site eligibility will be determined by EPA or the state.
- If the state is unable to make the eligibility determination, EPA will.



Different Definitions of a “Viable Responsible Party”

- Keep in mind that the definition of a “viable or non-viable responsible party” differs slightly when using the term in context of brownfields funding.
- BUSTR’s general definition of a “non-viable responsible party” is used for enforcement purposes. Internal RP searches are conducted for this purpose.



Standards for Determining “Viable Responsible Party”

- The guidelines provide that a state making the “viable responsible party” determination for the applicant may use the standards of the guideline or use its own standards.
- Generally, BUSTR will apply its own standards in a “viable responsible party” determination but will consider applying USEPA guideline standards on a case by case review.



Main Difference

- Per the guidelines, EPA assumes that individual responsible parties are not viable - absent information suggesting the assumption is not warranted.*
- BUSTR requires individuals to submit financial information that is analyzed by an economic computer model. If the computer model determines they are unable to pay for corrective actions, then BUSTR considers them non-viable.

*USEPA Guidelines for Brownfield Grants, Appendix 1, Section 1.3.2



BUSTR RP Site Classifications

- Class A – Responsible Party Search is being conducted or needs conducted
- Class B – Insufficient information to identify the Responsible Parties
- Class C – All Responsible Parties have been identified and found NON-VIABLE
- Class D – At least one viable Responsible Party has been identified



Eligible Petroleum Brownfield Sites

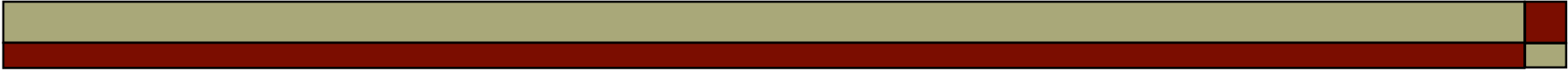
- Class C sites – BUSTR has already classified about 100 releases files as Class C sites
- BUSTR employs legal interns to perform Responsible Party searches. Currently BUSTR has over 500 files needing RP searches
- BUSTR will review submitted site specific information to make a RP determination



Percentage of Sites

- Over the lifetime of the BUSTR program there have been over 24,000 confirmed petroleum releases
- Currently there are over 3,700 open release files
- About 80% of these releases have at least one identified, presumed viable, Responsible Party
 - Leaving 20% of all open release files that either have NO VIABLE Responsible Party or a Responsible Party has yet to be identified

Note: Totals only include those sites where a “release” has been identified (environmental assessment conducted)



How does BUSTR
determine if there is a
Viable Responsible Party?

Responsible Party (RP) Search



BUSTR's Laws and Regulations

- ❑ Ohio's UST laws are based on federal law created in Subtitle I of RCRA
- ❑ Statutes that govern the BUSTR program are contained in the Ohio Revised Code (ORC) from §3737.87 through § 3737.89
- ❑ Rules that govern the BUSTR program are contained in the Ohio Administrative Code (OAC) from § 1301:7-9-1 through 17

Basic Definitions

- RESPONSIBLE PERSON
- OPERATOR
- OWNER



Responsible Person or Party (“RP”)

Ohio Revised Code (ORC) 3737.87(N):

“Notwithstanding division (F) of section 3737.01 of the Revised Code (*Fire Code*), “**responsible person**” means the person who is the **owner or operator** of an underground storage tank system.”

Operator

Ohio Revised Code 3737.87(G)

"Operator" means the person in daily control of, or having responsibility for the daily operation of, an underground storage tank system."





ORC 3737.87 (H) "OWNER" means:

“(1) In the instance of an underground storage tank system in USE ON November 8, 1984, or brought into use *after* that date, the person who owns the UST system;

(2) In the instance of an underground storage tank system in USE BEFORE November 8, 1984, that was no longer in use on that date, the person who owned the UST system immediately before the discontinuation of its use.”



Owner continued...

“The term includes any legal, equitable, or possessory interest of any kind in an underground storage tank system or in the property on which the underground storage tank system is located.”

- Property Owners, Lessees, Sub-Lessees, Parties of a Land Contract, Trusts, Life Estates, etc.



Lender Exclusion Clause

“Owner” continued ... “The term does not include any person who, without participating in the management of an underground storage tank system and without otherwise being engaged in petroleum production, refining, or marketing, holds indicia of ownership in an underground storage tank system primarily to protect the person's security interest in it.”

- Mortgage lenders, creditors, and gasoline distributors/suppliers.



Key Date – November 8, 1984

- If the UST was in use at any time *after* November 8, 1984, the Responsible Party is the owner and operator at the time the release is discovered – *even if they never used the UST.*
- If the UST was last used *before* November 8, 1984, the responsible party is the owner and operator that last used the USTs.



Where to Start a RP Search??

Find out when the USTs in question were last used

Is there any evidence of the USTs being used after November 8, 1984?

If not, approximately when were the USTs last used?



Establishing the “Last Use” Date

- USTs Registrations
 - Starting in 1988, owners and operators were required to register regulated USTs
 - Registrations require the owner to indicate whether the UST was currently in use, out of service, etc.
- UST Permits
 - Permits for the removal of USTs may have information about when the UST was last used
- Delegated Fire Departments



Other Sources for “Last Use” Date

- Inspection reports by BUSTR, local fire departments of USTs or above ground equipment
- OEPA, local health department incident records
- Statements/Affidavits from current and prior property owners stating the USTs were not used
- Listings in local telephone directories (e.g. a listing for ‘Bob’s Sunoco’ in 1968)
- Gasoline supply/inventory records, terms of leases



ONCE the "IN USE" date is established, start identifying the appropriate parties

Remember...

If the USTs were used *after* November 8, 1984, identify the owners and operators at the *time of the release*.

If the USTs were last used *before* November 8, 1984, identify the owners and operators that *last used the tanks*.



Perform the Title Search

- Property information. Generally to perform a title search, you will need the address of the site, parcel number, and current owners name(s).
- Search Records from the County Auditor's Office and County Recorder's Office



Multiple Responsible Parties

There can be more than one Responsible Party (RP) for a release

- RP that owned the property (*Owner*)
- RP that owned the tank system (*Owner*)
- RP that leased the property (*Owner*)
- and lastly, the RP that operated the tanks (*Operator*)



Property Owner vs. UST Owner

A different entity other than the property owner may have owned the tanks.

If this is the case, BUSTR looks for a bill of sale or contract.

Without a contract or bill of sale, the presumption is that the property owner bought everything on and in the property - lock, stock, and barrel.



Primary Documents

- ❑ Warranty Deeds
- ❑ Quitclaim Deeds
- ❑ Sheriff's Deeds
- ❑ Administrator's or Executor's Deeds
- ❑ Leases
- ❑ Land Contracts
- ❑ Bill of Sales



Secondary Documents

Although these documents do not identify the “owners” they may be helpful:

- ❑ Judgments
- ❑ Mortgages
- ❑ Easements
- ❑ UCC statements
- ❑ Financing statements
- ❑ Liens (e.g., tax, mechanics)



Now...

Step 1: Find the “last use” date

Step 2: Identifying the names of the owners and operators

Next...



Is the RP Viable?

Now that we have identified all of the Responsible Parties, we need to know if they are VIABLE

- Are they still in existence?
- Are they financially able to perform the required corrective actions?



Viability

For Individuals:

- Deceased
- Bankruptcy
- Financial Inability to Pay (FITP)
Analysis



Viability

For Corporations, Partnerships, Trusts,
Municipalities:

- Entity no longer exists (out of business, dissolved, defunct)
- Bankruptcy
- Financial Inability to Pay (FITP)
Analysis



Corporations

If a corporation is identified as a Responsible Party, a search of Ohio's Secretary of State filings is conducted.

If company is "dead" or "cancelled", check to see if it merged with another company or if it changed its name. If so, then the new company would be considered the Responsible Party.



Financial Inability to Pay (FITP) Analysis

BUSTR uses computer models created by USEPA for analyzing the ability of an individual, company or municipality to pay for environmental assessment and remediation

- For Individuals - INDIPAY
- For Corporations - ABEL
- For Municipalities - MUNIPAY

For more information on these computer models, go to USEPA's link at: www.epa.gov/compliance/civil/econmodels/



Required Financial Information

For Individuals:

- Need the three (3) most recent federal tax returns. If not required to file a tax return, need IRS Form 4506 completed. IRS will provide BUSTR with proof of non-filing status.
- Questionnaire completed regarding individual's assets, liabilities, household income and expenses, etc.



Required Financial Information

For Corporations, Partnerships:

- Need at least three (3) and up to five (5) years of recent tax returns.
- IRS Form 4506-T will provide BUSTR with a transcript of tax returns



Out of Service USTs

Be careful of sites that still have out of service or abandoned USTs. The current owner is required by law to remove, close in place, etc. any UST that has been out of service for more than 12 months.

OAC 1301:7-9-12(B)(1) "Any person who holds a legal, possessory, or equitable interest in a parcel of real property on which an underground storage tank system is located, **regardless of that person's status as an "owner" or "operator"** ... shall comply with paragraphs (A) through (H) of this rule. The owner and operator shall comply with the entire rule."



Contact Information for BUSTR

- Scott Sigler and Ralph Mertz, BUSTR Environmental Specialists - review requests for Brownfields eligibility (site specific and community wide) eligibility determination letters
- Verne Ord, Assistant Bureau Chief - supervisor for Brownfields related requests and information
- Lori Stevens, Legal Counsel – reviews responsible party determinations

BUSTR: (614) 752-7938 or (800) 686-2878