

# VAP Does Petro: New Initiatives for BUSTR Sites



**MARTIN SMITH, OHIO EPA**  
**ERIN HAZELTON, OHIO DOD**

# VAP and BUSTR



- Voluntary Action Program (VAP)

- Program run by Ohio EPA
- Addresses both Hazardous Substances and Petroleum



- Bureau of Underground Storage Tank Regulations (BUSTR)

- Run by Division of State Fire Marshal  
Ohio Department of Commerce
- Addresses Petroleum from regulated USTs, except where there are exemptions



# USTs Not Regulated by BUSTR



- Examples of USTs exempt from BUSTR regulation
  - Farm or residential USTs of 1,100 gallons or less used for storing motor fuel for noncommercial purposes
  - USTs used for storing heating fuel for use on the premises
  - Flow-through process tanks
  - Other exemptions are in BUSTR's rules



# VAP Eligibility for Petroleum



- VAP addresses both hazardous substances and petroleum
- Before completing VAP, VAP eligibility must be established
  - Petroleum releases from USTs subject to BUSTR corrective action are not VAP eligible
  - NFA letter from BUSTR required for petroleum releases before property is VAP eligible
- Means two “hoops” to jump through – First BUSTR then VAP



# By-passing BUSTR to do VAP



- Class C Release sites are VAP eligible
  - Responsible parties (RPs) are not eligible
  - What is a Class C Release site and how is it designated?
- What about other classes of sites (A, B, or D)?
  - Legislation is proposed to also make these sites eligible for the VAP
  - What are the proposed restrictions and who can do it?
- BUSTR is still involved with RP determinations

# BUSTR's RP Classification System



- Class A – RP Search is being conducted or needs conducted
- Class B – Insufficient information to accurately identify all the RPs at this time
- **Class C – All RPs have been identified and found NON-VIABLE**
- Class D – At least one viable RP has been identified

Note: Statuses can change.

# “Class C Release” Sites



- VAP eligible since late September 2011
- Class C refers to the BUSTR RP classification
  - All RPs have been identified and found NON-VIABLE
  - Who does BUSTR consider to be RPs?
  - Can the RPs afford to pay for assessment and cleanup?
- Release -- Evidence of a release from the UST system
- Abandoned USTs do not equate to Class C Release

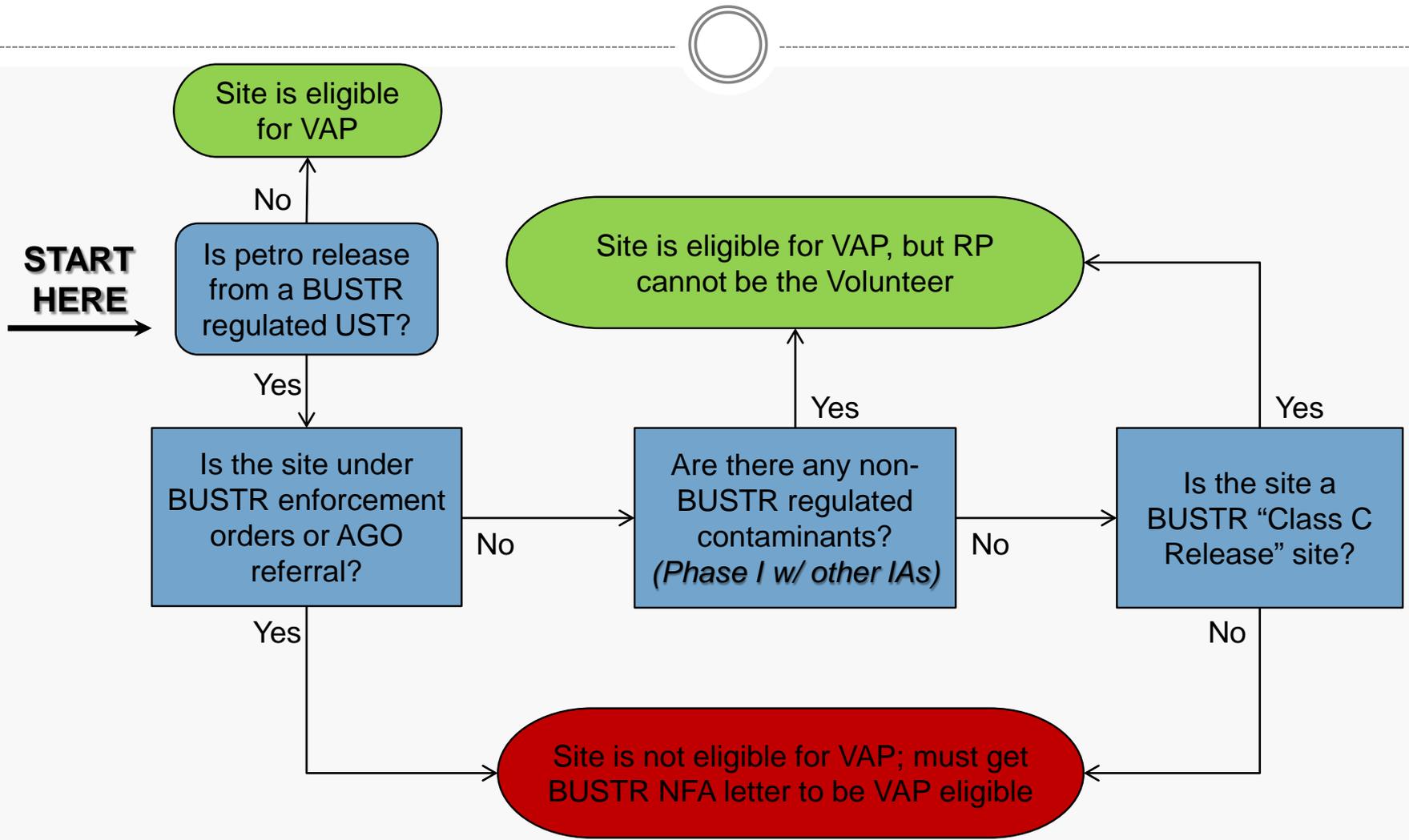
[http://www.epa.ohio.gov/derr/SABR/class\\_c.aspx](http://www.epa.ohio.gov/derr/SABR/class_c.aspx)

# What about non-Class C Release Sites?



- Proposed legislation will make almost any BUSTR site eligible for VAP, as long as...
  - RP cannot be the Volunteer
  - Other non-BUSTR contaminants are being addressed by the voluntary action, i.e. Phase I with non-BUSTR IAs
  - Site is not under a BUSTR enforcement order or referral to the Attorney General Office
- All Class C sites will still be eligible for the VAP
  - RP cannot be the Volunteer

# Proposed VAP Eligibility of BUSTR Sites



# VAP CNS Recognized by BUSTR



- BUSTR will accept a VAP Covenant Not to Sue (CNS) as equivalent to a BUSTR No Further Action (NFA) determination
- Ohio EPA will notify BUSTR once a BUSTR site receives a VAP CNS
- However, if the CNS is voided or revoked then BUSTR will revoke the NFA determination



# Responsible Party for Release



- Two important dates...
  - 1) Date the UST was last used
  - 2) Date when UST release was discovered
- Prior to November 8, 1984
  - Person who owned UST before discontinuation of use
- On or after November 8, 1984
  - Person who owned UST when release was reported
- **Warning** -- Exercise care when acquiring property with USTs (or even suspected USTs)



# UST Closure Obligations



- BUSTR rules for closure apply at all UST sites
  - Owners are responsible for closure
  - Owners responsible for closure may not be RPs
  - Owners who are RPs must conduct sampling, otherwise sampling is optional
- What is UST closure?
  - In almost all cases, closure means digging up and removing the UST system (tanks, piping, etc.)
  - Sampling during UST closure is the best way to find releases
  - If results are below action levels, BUSTR will issue NFA

# Determining Responsible Parties



- BUSTR determines who are (or are not) RPs
  - RP searches do take time and are slow to complete
  - Legal interns conduct BUSTR's RP searches
  - BUSTR will have say in whether volunteer is not a RP
- Requests for Class C release status must be sent to BUSTR
  - Form online at Ohio EPA's website
- Class C release designation can be expedited
  - Provide as much information to BUSTR to aid the RP search

# What Constitutes Non-Viable?



## **For Individuals:**

- Deceased
- Bankruptcy (Chapter 7, 12, 13)
- Unable to pay - Financial Inability to Pay (FITP) Analysis

## **For Corporations, Partnerships, Municipalities, etc.**

- Entity no longer exists (out of business, dissolved)
  - If the Company changed its name or merged with another entity then it is still considered VIABLE
- Bankruptcy (Chapter 11)
- Unable to pay - Financial Inability to Pay (FITP) Analysis

# Financial Inability to Pay (FITP)



One way BUSTR determines if a RP is non-viable is through a FITP analysis

- A FITP analysis for individuals requires tax returns (past 3 years) and a questionnaire regarding assets, debts, living expenses, etc. to be submitted. Corporations require just tax returns. **BUSTR conducts the FITP analyses.**

# VAP Eligibility Summary for Petroleum Sites



- Working to reduce the “hoops” a Volunteer must jump through for sites with releases from BUSTR regulated USTs
  - UST Closure under BUSTR rules is still required
  - BUSTR will still be involved in RP determinations
- All BUSTR Class C Releases are now VAP eligible
  - Caveat is Volunteer cannot be a RP
- Sites with a mix of BUSTR and non-BUSTR IAs should soon be VAP eligible -- **proposed**
  - Caveats are no enforcement actions and Volunteer cannot be a RP
- BUSTR will honor the VAP CNS for eligible sites

# Options for Funding Assistance



- Targeted Brownfield Assessments (TBAs)
  - Ohio EPA and U.S. EPA both have TBA funds
  - Assessments at no-cost for local governments
- U.S. EPA Assessment and/or Cleanup Grants
  - Annual grant cycle; competitive
- Options from Ohio Department of Development
  - U.S. EPA Brownfield Revolving Loan Fund
  - Other grant or loan programs from Ohio DOD

# Targeted Brownfield Assessment



Assessment work provided at no cost to local governments

- Phase 1 Property Assessments
- Asbestos Inspections
- Phase 2 Property Assessments
  - ✦ Closure sampling
  - ✦ Screening assessments
  - ✦ Supplemental assessments



# TBA Application Process



- Applicant must be unit of local government
- Application form must be completed
  - Available online: [http://www.epa.ohio.gov/derr/SABR/Grant\\_Assistance.aspx](http://www.epa.ohio.gov/derr/SABR/Grant_Assistance.aspx)
  - Basic property and project information
  - Eligibility questions (applicant & property)
  - Requested services
  - Signed access agreement required (templates are included)
- Non-competitive
  - Projects funded as they come to Ohio EPA
  - Federal and State funding sources (renewed annually)

# For More Information



## **Martin Smith, TBA Coordinator**

Ohio Environmental Protection Agency  
Division of Environmental Response and Revitalization  
Site Assistance and Brownfield Revitalization

Martin.Smith@epa.ohio.gov

(614) 644-4829 (desk #)

50 West Town Street, Suite 700  
Columbus, Ohio 43216-1049



Environmental  
Protection Agency



# **Brownfield Revolving Loan Fund Program**

**Erin Hazelton**  
**Ohio Department of Development**

# Goal: Remove obstacles and promote sustainable redevelopment



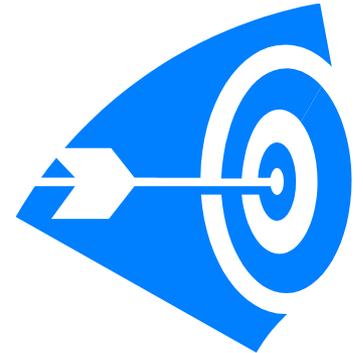
# Brownfield Revolving Loan Fund (Petroleum)



- Funding Source: US EPA
- Eligible Site: Real property with documented petroleum contamination. If BUSTR site, must be designated as “low risk”.
- Eligible Applicants: Anyone\*
- No match required
- No application deadline (3-4 months to receive funding)

## Terms (Petroleum)

- Max loan: \$300,000 per site
- Maximum 2% fixed-interest rate
- Up to 9 years to repay
- Deferred repayment period of 1 year
- No penalty for early payoff
- Local Government and 501c3 borrowers are eligible for 50% principal forgiveness for petroleum remediation projects.



## Additional Financial Tools...

- Ohio Historic Preservation Tax Credit
- Brownfield Loan Program
- Ohio New Markets Tax Credit
- Local Government Innovation Fund

Phone | 614.995.2292

Website |

<http://development.ohio.gov/Urban>