

**Rule Summary and Fiscal Analysis (Part A)****Department of Commerce**

Agency Name

Division

**David Sauer**

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**1301:7-9-13**

Rule Number

**AMENDMENT**

TYPE of rule filing

Rule Title/Tag Line

**Petroleum UST corrective action.****RULE SUMMARY**

1. Is the rule being filed for five year review (FYR)? **Yes**
2. Are you proposing this rule as a result of recent legislation? **No**
3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**
4. Statute(s) authorizing agency to adopt the rule: **3737.88, 3737.882**
5. Statute(s) the rule, as filed, amplifies or implements: **3737.88, 3737.882**
6. State the reason(s) for proposing (i.e., why are you filing,) this rule:  
Five-year rule revision required pursuant to ORC 106.03.
7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; if the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

Rule 1301:7-9-13 describes requirements for the investigation of suspected releases

of petroleum from UST systems, and corrective action for confirmed releases. The rule requires identification of the complete vertical and horizontal extent of contamination and the review and implementation of corrective actions sufficient to protect human health and the environment. Levels of chemicals of concern that are protective of human health and the environment are developed using a risk-based approach that incorporates known health risks of specific chemicals as well as information about their rate of transport through the environment that can change depending on site specific conditions.

The amendments to rule include:

- Revisions to the applicability section to allow ongoing corrective actions to continue under a previous rule version.
- Definition of "suspected release" amended to match federal version.
- Changed references from "sensitive area" to "sole source aquifer" to accommodate rescission of Rule 9.
- Three new chemicals of concern added for releases from USTs that had been in service prior to 1996 and could have stored leaded gasoline, and action levels throughout the rule are amended to reflect current science.
- Public notice requirements for certain advanced corrective actions updated and owner/operators required to submit proof of notification within 90 days.
- Voluntary corrective action provisions moved from Rule 14 to accommodate that rule's rescission.

A number of formatting and style changes have been made as well.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

Referenced standards are generally available to all affected parties. The reference standards can easily be purchased from the standard making organization. The affected parties typically will be professional engineers or otherwise professionals in the field of underground storage tank installation, removal, and repair. These parties would be expected to already own these standards in order to conduct their business.

9. If the rule incorporates a text or other material by reference, and it was

**infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

Not Applicable.

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

*Not Applicable.*

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so. If applicable, indicate each specific paragraph of the rule that has been modified:

*Not Applicable.*

12. Five Year Review (FYR) Date: **5/17/2017**

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

### **FISCAL ANALYSIS**

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

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This rule has no impact on agency revenues or expenditures.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

Not Applicable.

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

Rule 1301:7-9-13 covers all types of corrective actions ranging from a single tank tightness test (approximately \$200) to the remediation of major release that impacts soil and drinking water supplies that can ultimately cost several hundreds of thousands of dollars. It is important to note that owners and operators who are compliant with the financial responsibility rule (OAC 1301:7-9-05) and in good standing with the Petroleum UST Compensation Board ("Petro Board") are eligible to have all reasonable costs reimbursed, less a deductible.

With respect to this rule as a whole, it is not possible to quantify the specific costs of compliance because each release is unique in terms of amount of product spilled or released, the extent of it, and its impacts to soil, groundwater, surface waterways, and human health. Overall, however, the average cost of UST corrective action is \$132,000, per the Petro Board. This includes the on-site work, analysis of data, and preparation of any required reports.

In considering costs attributable strictly to the newly-proposed revisions, while most of the revisions are cost-neutral, the addition of three new chemicals of concern (COC) and expansion of the applicability of the action level for naphthalene to gasoline releases (from just diesel releases) means that the costs of lab analysis of samples will increase slightly, as follows:

- Two of the new COCs are lead scavengers, additives to leaded gasoline (which was not completely banned until January 1, 1996). Samples from releases at gasoline USTs that were in service before 1996 will need to scan for those scavengers; this is estimated to add \$10 to the analysis cost per soil sample and \$60 per water sample. The difference between the soil and water sampling costs is attributable to the need to use a separate analytical method for water samples for one of the two lead scavengers.
- The remaining new COC and the addition of naphthalene for all gasoline and used oil UST samples will add \$10 to the analysis for both soil and water samples.

Currently, laboratory analysis costs, included in the overall price of corrective actions, range from \$76.50 to \$171.50 per sample analyzed.

The cost estimates provided in support of the revised rules in this chapter were derived from a combination of sources including the Petroleum Underground Storage Tank Release Compensation Board, quotes from environmental consultants, the Regulatory Impact Analysis prepared by U. S. EPA in support of its July 15, 2015, final rule revisions, and BUSTR's staff experience.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **Yes**

You must complete Part B of the Rule Summary and Fiscal Analysis in order to comply with Am. Sub. S.B. 33 of the 120th General Assembly.

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **Yes**

You must complete the Environmental rule Adoption/Amendment Form in order to comply with Am. Sub. 106 of the 121st General Assembly.

**S.B. 2 (129th General Assembly) Questions**

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

A.) Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? **No**

B.) Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? **Yes**

Pursuant to ORC 3737.882(C)(2), violations of most BUSTR rules, including this one, are subject to a statutory civil penalty of up to \$10,000 per violation, per day. As a practical matter, violators are provided opportunities to return to compliance well before a civil penalty is considered.

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **Yes**

The rule describes various environmental investigations and activities intended first to determine the extent of a release, and then to remediate it. Each of these results in a report to the State Fire Marshal so that an owner or operator's progress may be verified and assistance can be provided to make certain that the work is being performed accurately.

**Rule Summary and Fiscal Analysis (Part B)**

1. Does the Proposed rule have a fiscal effect on any of the following?

(a) School Districts	(b) Counties	(c) Townships	(d) Municipal Corporations
<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>

2. Please provide an estimate in dollars of the cost of compliance with the proposed rule for school districts, counties, townships, or municipal corporations. If you are unable to provide an estimate in dollars, please provide a written explanation of why it is not possible to provide such an estimate.

This rule covers all types of corrective actions ranging from a single tank tightness test (approximately \$200) to the remediation of major release that impacts soil and drinking water supplies that can ultimately cost several hundreds of thousands of dollars. It is important to note that owners and operators who are compliant with the financial responsibility rule (OAC 1301:7-9-05) and in good standing with the Petroleum UST Compensation Board ("Petro Board") are eligible to have all reasonable costs reimbursed, less a deductible.

With respect to this rule as a whole, it is not possible to quantify the specific costs of compliance because each release is unique in terms of amount of product spilled or released, the extent of it, and its impacts to soil, groundwater, surface waterways, and human health. Overall, however, the average cost of UST corrective action is \$132,000, per the Petro Board. This includes the on-site work, analysis of data, and preparation of any required reports.

In considering costs attributable strictly to the newly-proposed revisions, while most of the revisions are cost-neutral, the addition of three new chemicals of concern (COC) and expansion of the applicability of the action level for naphthalene to gasoline releases (from just diesel releases) means that the costs of lab analysis of samples will increase slightly, as follows:

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- The remaining new COC and the addition of naphthalene for all gasoline and used

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3. If the proposed rule is the result of a federal requirement, does the proposed rule exceed the scope and intent of the federal requirement? **No**
4. If the proposed rule exceeds the minimum necessary federal requirement, please provide an estimate of, and justification for, the excess costs that exceed the cost of the federal requirement. In particular, please provide an estimate of the excess costs that exceed the cost of the federal requirement for (a) school districts, (b) counties, (c) townships, and (d) municipal corporations.

*Not Applicable.*

5. Please provide a comprehensive cost estimate for the proposed rule that includes the procedure and method used for calculating the cost of compliance. This comprehensive cost estimate should identify all of the major cost categories including, but not limited to, (a) personnel costs, (b) new equipment or other capital costs, (c) operating costs, and (d) any indirect central service costs.

Please see response to Question #2, above.

(a) Personnel Costs

Please see response to Question #2, above.

(b) New Equipment or Other Capital Costs

Please see response to Question #2, above.

(c) Operating Costs

Please see response to Question #2, above.

(d) Any Indirect Central Service Costs

Please see response to Question #2, above.

(e) Other Costs

Please see response to Question #2, above.

6. Please provide a written explanation of the agency's and the local government's ability to pay for the new requirements imposed by the proposed rule.

These costs are ordinary costs of conducting the business of the local government entity which will come from the normal operating budgets of the entities. The costs are reimbursable by the Petroleum Underground Release Compensation Board.

7. Please provide a statement on the proposed rule's impact on economic development.

The rule has a positive impact on economic development. It allows properties to return to compliance, achieve "no further action" status, facilitate the sale or transfer of the property, and allow the site to be re-used in an economically-beneficial manner.



**Environmental Rule Adoption/Amendment Form**

Pursuant to Am. Sub. H.B. 106 of the 121st General Assembly, prior to adopting a rule or an amendment to a rule dealing with environmental protection, or containing a component dealing with environmental protection, a state agency shall:

- (1) Consult with organizations that represent political subdivisions, environmental interests, business interests, and other persons affected by the proposed rule or amendment.
- (2) Consider documentation relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological feasibility of the proposed rule or rule amendment.
- (3) Specifically identify whether the proposed rule or rule amendment is being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program, whether the proposed rule or rule amendment is more stringent than its federal counterpart, and, if the proposed rule or rule amendment is more stringent, the rationale for not incorporating its federal counterpart.
- (4) Include with the proposed rule or rule amendment and rule summary and fiscal analysis required to be filed with the Joint Committee on Agency Rule Review information relevant to the previously listed requirements.

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(A) Were organizations that represent political subdivisions, environmental interests, business interests, and other persons affected by the proposed rule or amendment consulted ? **Yes**

Please list each contact.

Ohio Township Association

Ohio Petroleum Marketers and Convenience Store Association

Ohio Municipal League

Ohio Fire Chiefs' Association

Ohio Environmental Council

Mid-Ohio Regional Planning Commission

County Engineers Association of Ohio

County Commissioners' Association of Ohio

Ohio Department of Development

Ohio EPA

- (B) Was documentation that is relevant to the need for, the environmental benefits or consequences of, other benefits of, and the technological feasibility of the proposed rule or amendment considered ? **Yes**

Please list the information provided and attach a copy of each piece of documentation to this form. (A SUMMARY OR INDEX MAY BE ATTACHED IN LIEU OF THE ACTUAL DOCUMENTATION.)

40 CFR 280 Subpart E: Release Reporting, Investigation, and Confirmation

280.50 Reporting of suspected releases.

280.51 Investigation due to off-site impacts.

280.52 Release investigation and confirmation steps.

280.53 Reporting and cleanup of spills and overfills.

40 CFR 280 Subpart F: Release Response and Corrective Action for UST Systems Containing Petroleum or Hazardous Substances

280.60 General.

280.61 Initial response.

280.62 Initial abatement measures and site check.

280.63 Initial site characterization.

280.64 Free product removal.

280.65 Investigations for soil and groundwater cleanup.

280.66 Corrective action plan.

280.67 Public participation.

U.S. EPA memorandum dated 5/21/10 from the director of the Office of Underground Storage Tanks to state and tribal UST program managers, entitled "Recommendations for States, Tribes and EPA Regions to Investigate and Clean Up Lead Scavengers When Present at Leaking Underground Storage Tank Sites"

Ohio EPA's Chemical Information Database and Applicable Regulatory Standards (CIDARS) database for evaluation and establishment of new action levels for the chemicals of concern.

(C) Is the proposed rule or rule amendment being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal environmental law or to participate in a federal environmental program ?

**Yes**

Is the proposed rule or rule amendment more stringent than its federal counterpart ? **No**

Not Applicable

(D) If this is a rule amendment that is being adopted under a state statute that establishes standards with which the amendment is to comply, is the proposed rule amendment more stringent than the rule that it is proposing to amend? **No**