

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

Agency Name

Division

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1301:7-9-16

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

Petroleum contaminated soil.**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(A), 3737.88(E), 3737.882**5. Statute(s) the rule, as filed, amplifies or implements: **3737.88(A), 3737.88(E), 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:

The rule 1301:7-9-16 governs the storage, treatment and disposal of petroleum contaminated soil generated from corrective actions undertaken in response to releases of petroleum from underground storage tanks. The primary amendment to this rule is the assignment of new re-use action levels for contaminated soil (such soil that tests below these levels may be re-used for any lawful purpose and need not be disposed of). Eleven of these action levels have been loosened, two tightened, three are new because those chemicals of concern were not previously regulated, and three remain unchanged. The levels were re-calculated based on current scientific consensus.

Paragraph (D)(5) was amended to clarify that if PCS above action levels is returned temporarily to the tank cavity, the cavity must be lined to prevent migration of contamination.

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:

This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.

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:

This response left blank because filer specified online that the rule does not incorporate a text or other material by reference.

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 will have 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:

Rules 1301:7-9-16 addresses disposition of soils excavated in the course of UST removals or the conduct of corrective actions.

The costs associated with the rule include either treating soils determined to be contaminated or disposing of them at a licensed disposal facility. The owner or operator may treat contaminated soils at the site in lieu of disposal if a PCS Treatment Plan is submitted and approved. These costs may be estimated as follows:

Disposal at a licensed facility: \$18.75 per ton

Preparation of a PCS Treatment Plan: \$1500

Note that the actual costs of the PCS treatment will vary widely based on the method selected and the volume of soil to be treated, and therefore cannot be quantified.

In considering costs attributable strictly to the newly-proposed revisions, the only substantive changes to the rule were the addition of three new chemicals of concern and expansion of the applicability of the action level for naphthalene to gasoline releases. The costs associated with these changes are more appropriately discussed in connection with rule 1301:7-9-17, which governs the sampling and analysis of excavated soils.

The cost estimates provided in support of the revised rules in this chapter were obtained from the Petroleum Underground Storage Tank Release Compensation Board and quotes from environmental consultants.

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? **Yes**

If an owner or operator desires to treat petroleum contaminated soil rather than dispose of it, a PCS Treatment Plan must be approved by the State Fire Marshal.

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? **No**

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

The rule requires excavated soil to be sampled and screened for contamination. Additionally, if an owner or operator desires to treat petroleum contaminated soil rather than dispose of it, a PCS Treatment Plan must be submitted and a completion report submitted once the treatment goals are met.

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
Yes	Yes	Yes	Yes

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.

The costs associated with the rule include either treating soils determined to be contaminated or disposing of them at a licensed disposal facility. The owner or operator may treat contaminated soils at the site in lieu of disposal if a PCS Treatment Plan is submitted and approved. These costs may be estimated as follows:

Disposal at a licensed facility: \$18.75 per ton

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Note that the actual costs of the PCS treatment will vary widely based on the method selected and the volume of soil to be treated, and therefore cannot be quantified.

In considering costs attributable strictly to the newly-proposed revisions, the only substantive changes to the rule were the addition of three new chemicals of concern and expansion of the applicability of the action level for naphthalene to gasoline releases. The costs associated with these changes are more appropriately discussed in connection with rule 1301:7-9-17, which governs the sampling and analysis of excavated soils.

The cost estimates provided in support of the revised rules in this chapter were obtained from the Petroleum Underground Storage Tank Release Compensation Board and quotes from environmental consultants.

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. These costs are reimbursable by the Petroleum Underground Storage Tank Release Compensation Board.

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

This rule should not have any significant impact on economic development.

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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 ? **No**

Please indicate the reasons for not providing the information.

ORC 3737.88(E) grants the state fire marshal exclusive jurisdiction to regulate petroleum contaminated soil generated from conducting closure assessments and/or performing corrective actions in response to petroleum releases from regulated underground storage tanks. As there are few programs of this nature, the State Fire Marshal drafted the rule drawing on the experience and expertise of the BUSTR staff and Ohio EPA, Division of Hazardous Waste.

- (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**