

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 1301:7-9-16

Rule Type: Amendment

Rule Title/Tagline: Petroleum contaminated soil.

Agency Name: Department of Commerce

Division: Division of State Fire Marshal

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I. Rule Summary

1. **Is this a five year rule review?** Yes
 - A. **What is the rule's five year review date?** 6/7/2022
2. **Is this rule the result of recent legislation?** No
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 3737.88(A), 3737.88(E), 3737.882
5. **What statute(s) does the rule implement or amplify?** 3737.88(A), 3737.88(E), 3737.882
6. **What are the reasons for proposing the rule?**

Five-year rule review required pursuant to ORC 106.03.
7. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

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 only revision to the rule being proposed at this time is a clarification that where a federal statute or regulation is cited within the rule, language is added or revised to clearly indicate that the version of the federal statute or regulation is that which is in effect at the time this administrative rule is adopted. This language occurs at subparagraph (C)(2)(b).

- 8. Does the rule incorporate material by reference? Yes**
- 9. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.**

The incorporated material consists solely of federal statutes and/or regulations, which are readily available online.

- 10. If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

Not Applicable

II. Fiscal Analysis

- 11. Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.**

This will have no impact on revenues or expenditures.

Not Applicable

Not Applicable

- 12. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

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: \$20 per ton, plus transportation cost of \$15-\$20 per ton

Preparation of a PCS Treatment Plan: \$2250 (cost for a basic plan; for more sophisticated treatments, a higher plan cost is typical)

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.

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.

- 13. Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). Yes**
- 14. Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). Yes**
- 15. If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.**

Not Applicable

III. Common Sense Initiative (CSI) Questions

- 16. Was this rule filed with the Common Sense Initiative Office? Yes**
- 17. Does this rule have an adverse impact on business? Yes**
 - 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.

- D. Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? Yes

Sampling, storage, and treatment or disposal of petroleum-contaminated soil will have costs associated with it.

IV. Regulatory Restrictions (This section only applies to agencies indicated in R.C. 121.95 (A))

18. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? No

- A. How many new regulatory restrictions do you propose adding?

Not Applicable

- B. How many existing regulatory restrictions do you propose removing?

Not Applicable

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Part B - Local Governments Questions

1. Does the rule increase costs for:

A. Public School Districts	Yes
B. County Government	Yes
C. Township Government	Yes
D. City and Village Governments	Yes

2. Please estimate the total cost, in dollars, of compliance with the rule for the affected local government(s). If you cannot give a dollar cost, explain how the local government is financially impacted.

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: \$20 per ton, plus transportation cost of \$15-\$20 per ton

Preparation of a PCS Treatment Plan: \$2250 (cost for a basic plan; for more sophisticated treatments, a higher plan cost is typical)

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.

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

3. Is this rule the result of a federal government requirement? Yes

- A. If yes, does this rule do more than the federal government requires? No**
- B. If yes, what are the costs, in dollars, to the local government for the regulation that exceeds the federal government requirement?**

Not Applicable

4. Please provide an estimated cost of compliance for the proposed rule if it has an impact on the following:

A. Personnel Costs

Please see response to "Estimated Cost of Compliance", above.

B. New Equipment or Other Capital Costs

Please see response to "Estimated Cost of Compliance", above.

C. Operating Costs

Please see response to "Estimated Cost of Compliance", above.

D. Any Indirect Central Service Costs

Please see response to "Estimated Cost of Compliance", above.

E. Other Costs

Please see response to "Estimated Cost of Compliance", above.

5. Please explain how the local government(s) will be able to pay for the increased costs associated with the 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.

6. What will be the impact on economic development, if any, as the result of this rule?

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

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Part C - Environmental Rule Questions

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.

(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.

API-Ohio
County Commissioners' Association of Ohio
County Engineers Association of Ohio
Ohio Chamber of Commerce
Ohio Contractors Association
Ohio Council of Retail Merchants
Ohio Department of Development
Ohio Department of Transportation
Ohio Environmental Council
Ohio Fire Chiefs' Association
Ohio Hospital Association
Ohio Manufacturers' Association
Ohio Municipal League
Ohio Petroleum Contractors Association
Ohio Petroleum Marketers and Convenience Store Association, nka Ohio Energy and Convenience Association

Ohio Petroleum UST Release Compensation Board
Ohio School Boards Association
Ohio Township Association

- (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.)

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 originally drafted the rule drawing on the experience and expertise of the BUSTR staff and Ohio EPA, Division of Hazardous Waste.

For re-use action levels in Table 1: Ohio EPA's Chemical Information Database and Applicable Regulatory Standards (CIDARS) database.

- (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**