

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

Agency Name

Division Of State Fire Marshal

Division

Kevin Schmidt

Contact

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1301:7-9-17

Rule Number

RESCISSION

TYPE of rule filing

Rule Title/Tag Line

Sampling and analysis of excavated soils for purposes of treatment.**RULE SUMMARY**

1. Is the rule being filed consistent with the requirements of the RC 119.032 review? **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)(2), 3737.88 (E)**

5. Statute(s) the rule, as filed, amplifies or implements: **3737.88 (A)(2), 3737.88 (E)**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

Five year rule revision required under ORC 119.032.

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:

This rule specifies stockpiling and sampling requirements for excavated soils

potentially contaminated with petroleum.

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 If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation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

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

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so:

Not Applicable.

12. 119.032 Rule Review Date: **11/24/2004**

(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.

\$0

No change.

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:

Estimated costs are based on the handling of 500 cubic yards of soil. Excavation and storage costs for excavated soils are approximately \$8.00 to \$9.00 per cubic yard. Testing costs for the characterization of excavated soils are approximately \$0.85 and \$1.00 per cubic yard. Costs for loading, shipping and disposal of petroleum contaminated soils at a licensed disposal facility are approximately \$40.00 to \$50.00 per cubic yard. The cost for treatment of petroleum contaminated soils as an alternative to shipping and disposal can vary widely. Part of the pre-approval process will consist of an assessment of any cost savings over disposal that the treatment will provide. These cost estimates were received from the Petroleum Underground Storage Tank Release Compensation Board, who compensate owners and operators for expenses incurred in conducting corrective action for releases of petroleum from regulated underground storage tank systems.

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.

Rule Summary and Fiscal Analysis (Part B)

1. Does the proposed rule have a fiscal effect on any of the following (please check each that applies)?
- | | | | | | | | |
|----------------------|---|--------------|---|---------------|---|----------------------------|---|
| (a) School Districts | X | (b) Counties | X | (c) Townships | X | (c) Municipal Corporations | X |
| _____ | | _____ | | _____ | | _____ | |

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.

Estimated costs are based on the handling of 500 cubic yards of soil. Excavation and storage costs for excavated soils are approximately \$8.00 to \$9.00 per cubic yard. Testing costs for the characterization of excavated soils are approximately \$0.85 and \$1.00 per cubic yard. Costs for loading, shipping and disposal of petroleum contaminated soils at a licensed disposal facility are approximately \$40.00 to \$50.00 per cubic yard. The cost for treatment of petroleum contaminated soils as an alternative to shipping and disposal can vary widely. Part of the pre-approval process will consist of an assessment of any cost savings over disposal that the treatment will provide.

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?

 X
Yes 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.

Federal regulations require that petroleum contaminated soils must be treated and disposed of property, however these regulations give to specifics as to how shipping, treatment and disposal of petroleum contaminated soils are to be carried out. This rule establishes specific requirements on how to characterize, store, ship, treat, and dispose these soils. The standards established in the rule are intended to be protective of human health and the environment, while ensuring that excavated soils are not characterized or treated to a greater extent than necessary.

5. Please provide a comprehensive cost estimate for the proposed rule that includes the procedure and method used for calculating the costs 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.

Estimated costs are based on the handling of 500 cubic yards of soil. Excavation and storage costs for excavated soils are approximately \$8.00 to \$9.00 per cubic yard. Testing costs for the characterization of excavated soils are approximately \$0.85 and \$1.00 per cubic yard. Costs for loading, shipping and disposal of petroleum contaminated soils at a licensed disposal facility are approximately \$40.00 to \$50.00 per cubic yard. The cost for treatment of petroleum contaminated soils as an alternative to shipping and disposal can vary widely. Part of the pre-approval process will consist of an assessment of any cost savings over disposal that the treatment will provide.

These cost estimates were received from the Petroleum Underground Storage Tank Release Compensation Board, who compensate owners and operators for expenses incurred in conducting corrective action for releases of petroleum from regulated underground storage tank systems. See the provided attachment for reasonable cost estimates determined by the Board for the purpose of reimbursing owners and operators.

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.

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

No net impact on economic development should occur.

Rule # 1301:7-9-17

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.

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

 x
Yes No

If YES, please list each contact.

See Attachment A

If NO, please explain why affected organizations were not contacted.

(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?

 X
Yes No

Rule # 1301:7-9-17

If 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).

The Fire Marshal, in adopting this rule, relied upon the following documents and technical standards:

EPA – “Methods for Chemical Analysis of Water and Wastes”, Environmental Protection Agency, 1979, Revised March 1983.

EPA – “Methods for Determination of Metals in Environmental Samples”, Environmental Protection Agency, May 1994.

SW846 – “Test Methods for Evaluating Solid Waste – Physical/Chemical Methods”, 3rd Edition.

SW846 – “Test Methods for Evaluating Solid Waste – Physical/Chemical Methods”, Final and Promulgated Update II, IIA, III.

SM – “Standard Methods for the Examination of Water and Wastewater”, American Public Health Association, 17th Edition.

If NO, please indicate the reasons for not providing the information.

(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 No

If YES, is the proposed rule or rule amendment more stringent than its federal counterpart?

Yes No

If YES, what is the rationale for not incorporating the federal counterpart?

Federal regulations require that petroleum contaminated soils must be treated and disposed of property, however these regulations give to specifics as to how shipping, treatment and disposal of petroleum contaminated soils are to be carried out. This rule establishes specific requirements on how to characterize, store, ship, treat, and dispose these

soils. The standards established in the rule are intended to be protective of human health and the environment, while ensuring that excavated soils are not characterized or treated to a greater extent than necessary.

- (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?

Yes No

If YES, please explain why?

Additional field screening sampling of excavated soils is required. The intent is to better segregate soils so that owners and operators will not incur costs of treatment or disposal for soils eligible for re-use or to be returned to the tank cavity. Better characterization of excavated soils is expected to keep costs down overall, although sampling costs will increase.
