

**MEMORANDUM**

TO: David Sauer, Ohio Department of Commerce, Division of the State Fire Marshall-Bureau of Underground Storage Tank Regulations

FROM: Travis Butchello, Regulatory Policy Advocate

DATE: May 15, 2017

RE: **CSI Review – Underground Storage Tank Rules (OAC 1301:7-9-01 through 1301:7-9-07 and 1301:7-9-09 through 1301:7-9-19)**

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

This rule package consists of 17 amended¹ rules and 1 rescinded rule, proposed by the Ohio Department of Commerce (ODC) as part of the statutory five-year rule review requirement. The rule package was submitted to the CSI Office on December 16, 2016 and the public comment period was held open through December 30, 2016. The CSI public comment period began on April 17, 2017 was held open through April 28, 2017. One comment was received during this time. A response to the comment and revisions were submitted to the CSI Office on May 12, 2017.

The rules cover regulations pertaining to underground storage tanks (UST). UST rules direct owners and operators on all aspects of managing USTs that contain regulated substances such as

¹ Ohio Administrative Code (OAC) 1301:7-9-05 through 1301:7-9-09.1 are being amended to the extent that the Legislative Service Commission requires the Ohio Department of Commerce rescind the rules and replace them with a new rule of the same rule number.

petroleum. The amended rules address formatting, definition additions to conform with federal changes, and clarifications of requirements imposed by the ODC. Specifically, the rules outline a plan for emergency if a UST begins to leak or is damaged in a way that it poses a risk to public health or the environment. The rescinded rule pertains to the inspection of UST's along with maintenance procedures. The BIA maintains that the purpose of the amended rules is to reduce the number of USTs that leak. If a UST does leak, the rules provide an adequate process for correction and remediation so that the property can be used in the future.

During its first early stakeholder outreach process, ODC enlisted input from numerous municipalities, environmental entities, and petroleum organizations throughout Ohio. During this time, ODC received 8 comments from stakeholders and decided to withdraw the rules and submit a second draft. A second draft was submitted to stakeholders in October 2016 and a meeting was held in December 2016. Based upon conversations at the meeting, stakeholders reached agreement with ODC regarding minor issues primarily regarding term clarifications and changes along with cross references to federal law. One comment was submitted by the American Petroleum Institute of Ohio (API) during the CSI public comment period. While API commented on numerous provisions, their primary concern rested with the classification of changes to UST's to ensure compliance with state law. Prior to amendment, the rules stated that spill bucket repairs for USTs were classified as "routine maintenance." This meant that an owner of a UST could repair and ensure compliance with the rules without obtaining a permit or having certified inspectors inspect and remain on site while repairs were completed. In the draft rules, ODC wished to change such repairs and maintenance to a "modification." Changing the classification would require owners of USTs to obtain permits and have inspectors onsite during the process. ODC contended that changing the process to a modification would help for oversight purposes. After deliberation, ODC decided to keep the spill bucket provisions classified as "routine maintenance" to ensure the rules were not overly burdensome.

The rules primarily impact gasoline service stations throughout the state. Other businesses that may be affected are dry cleaners, oil change facilities, and among others, auto repair shops. The nature of the adverse impact is costs of UST registration, obtaining permits, maintenance of records, and submission of reports to demonstrate compliance. The BIA states that while the quantifiable impact is predictable regarding registration fees per tank and permit fees for UST work, the cost of repair of USTs can vary dramatically depending on the amount of tanks repaired and costs of obtaining inspectors. ODC states that the regulatory intent of the rules justifies the adverse impact because the release of petroleum products into the environment is a serious threat to public health. The UST rules help prevent those occurrences while maintaining compliance with federal law. The program allows the state to ensure that USTs are installed, operated, and maintained appropriately and done so in a cost efficient manner to the business community. Additionally, ODC engaged stakeholders throughout the process and made concessions based on business concerns.

Recommendation

For the reasons explained above, this office does not have any recommendations regarding this rule package.

Conclusion

Based on the above comments, the CSI Office concludes that the Ohio Department of Commerce should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.