



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

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### Business Impact Analysis

**Agency, Board, or Commission Name:** Petroleum UST Release Compensation Board

**Rule Contact Name and Contact Information:** Starr Richmond – 614-752-8963

4151 Executive Parkway, Suite 350, Westerville, Ohio 43081

**Regulation/Package Title:** OAC Chapter 3737 Five-Year Review – Rule Amendments

**Rule Number(s):** 3737-1-04, 3737-1-07, 3737-1-09, 3737-1-12, 3737-1-12.1, 3737-1-15, 3737-1-16, and 3737-1-19.

**Date of Submission for CSI Review:** October 17, 2019

**Public Comment Period End Date:** October 31, 2019

**Rule Type/Number of Rules:**

- ☐ New / \_\_\_\_ rules ☐ No Change / \_\_\_\_ rules (FYR? \_\_\_\_)  
☒ Amended / 8 rules (FYR? Yes) ☐ Rescinded / \_\_\_\_ rules (FYR? \_\_\_\_)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

#### Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

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**The rule(s):**

- ☐ a. **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- ☐ b. **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- ☒ c. **Requires specific expenditures or the report of information as a condition of compliance.**
- ☒ d. **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

**Regulatory Intent**

**2. Please briefly describe the draft regulation in plain language.**

***Please include the key provisions of the regulation as well as any proposed amendments.***

In accordance with the five-year rule review requirement of section 119.032 of the Revised Code, the Petroleum Underground Storage Tank Release Compensation Board (Board), with significant participation and input from industry representatives, agency stakeholders, agency staff, and the Assistant Attorney General assigned to the Board reviewed each of the rules, and as a result of this review, the Board voted to amend the following rules:

Rule 3737-1-04 Annual petroleum underground storage tank financial assurance fee, certification of compliance and financial responsibility.

This rule prescribes the annual requirements of petroleum underground storage tank (UST) owners and operators (responsible persons) for establishing coverage with the Financial Assurance Fund (Fund), including the payment of the annual per-tank financial assurance fee, certification of compliance with applicable rules for USTs adopted by the fire marshal, demonstration of financial responsibility for the deductible amount of coverage with the Fund, and, if applicable, compliance with the coverage reinstatement requirements of rule 3737-1-04.1. The rule further requires the responsible person to provide notice to the director when installation of a UST has occurred or when ownership of a UST has transferred and establishes the process for transferring the certificate of coverage to the new responsible person as well as the criteria for the issuance of the certificate of coverage when no certificate was in effect at the time of transfer. The rule sets forth the notification requirements to the responsible person and to the fire marshal when a responsible person fails to timely remit payment of the annual per-tank fees or fails to meet the criteria for the issuance of the certificate of coverage. A late payment fee is imposed when the annual per-tank fee is not timely remitted. The rule also provides the responsible person with the right to file an objection to an order to pay fees or a determination denying or revoking a certificate of coverage.

The Board is proposing to amend rule 3737-1-04 and also rescind rule 3737-1-04.2 (see also Business Impact Analysis – Rescinded Rules submission). The change to paragraph (F)(2)(b) of rule

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3737-1-04 addresses the rescission of rule 3737-1-04.2 which was adopted to provide a new responsible person of a UST system the option to submit a baseline environmental site assessment in lieu of remitting payment of any Fund fees that are outstanding at the time of transfer.

#### Rule 3737-1-07 Establishing fund eligibility for corrective action costs.

This rule provides the requirements for obtaining eligibility to file claims under the Fund. In addition, after a responsible person is determined to be eligible, the rule requires the responsible person to maintain eligibility by maintaining compliance with the UST regulations. If the responsible person fails to maintain compliance with the UST regulations, eligibility to file claims under the Fund may be revoked.

The proposed amendments add missing comas to paragraphs (A)(2) and (A)(10) and the text in paragraph (A)(5)(a) **“was required to be reported to the fire marshal” is being removed.** The term **“release incident,” which was added to the rule effective January 1, 2019, establishes the date at** which the tanks must have been registered with the fire marshal in order to be granted eligibility to claim under the Fund.

#### Rule 3737-1-09 Limitations of fund coverage.

This rule provides a listing of costs that are specifically excluded from Fund reimbursement. The Board proposes to insert text to paragraph (A)(2) to clarify that corrective action costs cannot be reimbursed for a release for which eligibility was not sought.

The proposed changes to paragraphs (A)(4), (A)(11), (A)(15), and (A)(16) are editorial and intended to make the language of the rule more clear. The Board is proposing to amend paragraph (A)(17) so responsible persons are aware that a markup on charges for utilities or costs for the transportation of soil and backfill materials is not reimbursable. The proposed new paragraph (A)(18) explains that if a responsible person receives payment for corrective actions from a party that caused or contributed to the release, the responsible person cannot also receive payment from the Fund for those costs.

#### Rule 3737-1-12 Application for reimbursement.

This rule provides the requirements for filing a Claim Reimbursement Application and sets the deadlines for the responsible person to submit the application.

The Board proposes to **insert “on a form prescribed by the director” in paragraph (A)** to clarify that the reimbursement application must be filed on a director-prescribed form. As recommended by the Legislative Service Commission, paragraphs (B)(6) and (B)(7) are being amended to replace the language **“an above described program task” with “a program task described in this paragraph.”** The word **“summary” is being inserted in paragraphs (D)(7) and (E)(7)** to conform with the report names as they are used within the fire marshal’s rules. The proposed amendment to paragraph (E)(1) changes the deadline for submitting an application for reimbursement for immediate corrective action costs to one year from the date the immediate corrective action report is required to be submitted to the fire marshal. This proposed change makes the filing deadline consistent with

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the claim filing deadlines of the other program tasks described in the rule. **The text “tier 1 delineation notification” is being removed from paragraph (E)(3) because the fire marshal's rule 1301:7-9-13 effective September 1, 2017, does not require a tier 1 delineation notification report to be submitted.**

Rule 3737-1-12.1 Mandatory and voluntary pre-approval of corrective action costs.

The rule sets forth the requirements for requesting pre-approval of pending corrective action costs. Any costs submitted for reimbursement that were not pre-approved as required are subject to a 50% reduction in the reimbursable amount.

The proposed change to paragraph (A)(1) clarifies that a request for the pre-approval of costs associated with an interim response action **must be submitted to the Board's director** at the same time an interim response action notification is submitted to the fire marshal.

Rule 3737-1-15 Modifying the deductible or the reduced deductible.

The rule provides for the modification of the deductible and reduced deductible if necessary to ensure the solvency of the Fund and to meet the financial soundness objectives set forth in division (C) of section 3737.91 of the Revised Code.

**The proposed amendment to paragraph (A) corrects the misspelling of the word “ensuring.”**

Rule 3737-1-16 Third-party claims.

The rule limits the compensation to be paid to a third-party to the reasonable costs of bodily injury or property damage that **are not covered by the responsible person's insurance or another party** and do not exceed the maximum disbursement amount set forth in section 3737.91 of the Revised Code. In addition, the rule sets forth the requirements for the responsible person to keep the Board informed of any actions involving the third party.

**The missing hyphen in “third-party claims” in paragraph (C)** is being added and the text of paragraph (E) is being reworded with the intent of making it more apparent that bodily injury or property damage costs covered under any insurance policy or to be paid by any other party cannot also be recovered from the Fund.

Rule 3737-1-19 Establishing fund eligibility for third party claims.

The rule sets forth the requirements for the filing for and determination of eligibility to file claims under the Fund for compensation paid or anticipated to be paid to a third party for the costs of bodily injury or property damage resulting from an accidental release of petroleum from an assured UST.

**The text in paragraph (A)(3)(a) “was required to be reported to the fire marshal” is being removed as the term “release incident,” which was added to the rule effective January 1, 2019, establishes the date at which the tanks must have been registered with the fire marshal in order to be granted third-party eligibility to claim under the Fund.**

**3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

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Rule	Statutory Authority:	Rule Amplifies:
3737-1-04	3737.90	3737.91, 3737.92
3737-1-07	3737.90	3737.92
3737-1-09	3737.90	3737.92
3737-1-12	3737.90	3737.92
3737-1-12.1	3737.90	3737.92
3737-1-15	3737.90	3737.92
3737-1-16	3737.90	3737.92
3737-1-19	3737.90	3737.92

**4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

*If yes, please briefly explain the source and substance of the federal requirement.*

While chapter 3737 of the Ohio Administrative Code is not a regulation, the Board and the Fund it manages were created to satisfy federal EPA regulations requiring all U.S. petroleum UST owners to demonstrate \$1 million of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases from petroleum UST systems [40 C.F.R. Part 280, Subpart H].

**5. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

Not Applicable.

**6. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

The Fund serves three vitally important public functions. First, the Fund provides an affordable mechanism necessary to fulfill the federal and state regulations that require all petroleum UST owners and operators to demonstrate financial responsibility of \$1 million for corrective action costs and compensation to be paid to a third party for bodily injury or property damage resulting from an accidental release of petroleum from their UST systems. Second, it protects Ohio's businesses and individuals from financial insolvency by reimbursing responsible persons for the costs incurred to investigate and remediate any releases as well as to compensate affected third-parties. Lastly, it serves to protect the welfare of the general public through the protection of Ohio's land and water resources, thereby reducing health risks associated with petroleum releases.

Since the Fund was established by the Ohio General Assembly in 1989, the Fund has proven to be a viable financial assurance mechanism for Ohio's petroleum tank owners. To date, more than \$261 million has been reimbursed to Ohio's tank owners and operators to clean up more than 3,175 petroleum contaminated sites.

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**7. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

Success of these rules will be measured by the overall effectiveness and efficiency of the agency's mission of providing financial assistance to remediate contamination caused by releases from assured petroleum USTs.

**8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

<u>No</u>	R.C. 101.352	Request for appearance before joint committee regarding agency's reliance on principle of law or policy.
<u>No</u>	R.C. 101.353	Request for appearance before joint committee regarding agency's failure to adopt rule.
<u>No</u>	R.C. 106.032	Authority of chairperson to submit rule for review.
<u>No</u>	R.C. 121.93	Review of agency operations.
<u>No</u>	R.C. 121.931	Petition to restate a principle of law or policy in a rule.

**Development of the Regulation**

**9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

*If applicable, please include the date and medium by which the stakeholders were initially contacted.*

The Board's Rules Committee holds open meetings throughout the rule review year. The Committee consists of Board Chair, James Rocco, representing petroleum refiners; Vice-Chair, John Hull, representing engineers with geology experience and not associated with the petroleum industry; Mayor Ron Falconi, representing local government; Steve Bergman, representing professional engineers; and Don Bryant a representative with experience in property and casualty insurance. The committee met on September 12, 2018; January 9, 2019; and March 13, 2019.

Agency stakeholders were notified of the Rules Committee meetings by email on August 9, 2018; December 10, 2018; and February 12, 2019. Copies of the email notices along with a list of the Board's stakeholders that were contacted is attached as Exhibit A. Meeting notices were also published on the Board's website, posted at the Board's office, and sent to Gongwer News Service.

The following stakeholders were in attendance at one or more of the Rules Committee meetings: Dan Adams and Doug Darrah, representing ATC Group Services LLC; Claire Linkhart representing API Ohio; Scott Fleming representing Speedway, LLC; and Robert Cantrell representing Cantrell Companies. The following Board staff were also in attendance at one or more of the meetings: Starr

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Richmond, Executive Director; Madelin Esquivel, Assistant Director; Cindy Duann; Rick Trippel; Dave Gram; and Jonathan Maneval. The Board's Assistant Attorney General, Leigh Bayer, also attended the meetings.

**10. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

The Board's Rules Committee, agency stakeholders, agency staff, and the Assistant Attorney General assigned to the Board met to review each of the Board's rules as part of the five-year rule review process. After discussing the Board's rules, the consensus was that minor editorial changes to rules 3737-1-07, 3737-1-12, 3737-1-12.1, 3737-1-15, 3737-1-16, and 3737-1-19 would benefit Ohio's tank owners and operators by making the rules easier to read and understand. The stakeholders involved found that rule 3737-1-04.2 should be rescinded (see business Impact Analysis – Rescinded Rules submission) which resulted in the minor change to rule 3737-1-04. The change to rule 3737-1-09 was proposed in direct response to stakeholder comments received from environmental consultants.

**11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

Not Applicable.

**12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

Not Applicable.

**13. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

Not Applicable.

**14. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

The Board is the only State of Ohio agency that exists to provide Ohio's petroleum UST owners with \$1 million of financial responsibility to pay for damages caused by releases from their UST systems.

**15. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

The Board notifies Ohio's petroleum UST owners and operators and agency stakeholders of its rule filings through a newsletter and its website. In addition, agency correspondence is written to clearly explain the requirements of the Board's rules to the reader. Constituents are encouraged to contact

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the Board's office to discuss any questions or concerns regarding the Board's rules with trained agency personnel.

### **Adverse Impact to Business**

**16. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

- a. Identify the scope of the impacted business community; and**
- b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance); and**
- c. Quantify the expected adverse impact from the regulation.**  
*The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.*

The rules adopted by the Board apply to all of Ohio's past and present petroleum tank owners and operators. Currently there are approximately 2,650 private owners of 18,700 USTs; an additional 1,500 tanks are owned and operated by public entities.

Rule 3737-1-04

- a. While rule 3737-1-04 impacts all of Ohio's petroleum tank owners and operators, the proposed amendment to rule 3737-1-04 and rescission of rule 3737-1-04.2 (see also Business Impact Analysis – Rescinded Rules submission) will only affect a small percentage of tank owners, specifically those who acquire ownership of an underground tank system for which prior year(s) Fund fees are outstanding.
- b. Rule 3737-1-04 requires both an expenditure and the reporting of information as a condition of compliance. All tank owners must remit an annual per-tank fee. An owner that does not timely remit the annual fee may also be subject to late payment fees, collection costs, and interest charges. Where ownership of a UST system is transferred, the new responsible person is subject to a transfer fee. Each year all tank owners must submit a completed application for a certificate of coverage. In addition, owners must provide information concerning the installation and acquisition of petroleum UST systems.
- c. The annual per-tank fee is currently \$350. A late fee of up to \$1,000 per tank is assessed for untimely payment. Delinquent accounts may be referred to the Attorney General's Office for collection, and as a result, collection costs and interest charges may be assessed. Upon the transfer of a UST system, the new responsible person is subject to a transfer fee of \$500 per facility. The annual application for a certificate of coverage required by this rule, including the certification of compliance with the fire marshal's rules and the statement of financial responsibility for the deductible amount of coverage with the Fund, is typically three pages and

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requires minimal time to complete. It is not necessary to hire an accountant, consultant, or other professional to complete the application. A tank owner that wishes to appeal a determination or an order issued by the director may file an objection via email, fax, or mail. An attorney is not necessary for the filing of an objection. The additional notifications required by the rule, including the notification of tank installation or transfer, may similarly be provided via email, fax, or mail. As a convenience, single-page **notification forms are available on the Board's website.**

In their current form, rules 3737-1-04 and rule 3737-1-04.2 provide the purchaser of a UST system the option of submitting a baseline environmental site assessment (ESA) in lieu of remitting payment for any fees outstanding at the time of the transfer. The proposed amendment to rule 3737-1-04 and the rescission of rule 3737-1-04.2 will eliminate the option of performing a baseline ESA and therefore, the purchaser of a UST system will be required to remit any fees that are outstanding at the time of the transfer before a certificate of coverage with the Fund can be issued. However, the baseline ESA option was established during the last five-year rule review and to date, no new owner has elected to submit a baseline ESA instead of remitting the outstanding fees. Stakeholders indicated that the cost of an ESA and the risk associated with discovering a release during the ESA for which Fund reimbursement would not be available, most likely outweighs the amount of any fees due at the time of transfer. Therefore, it is unlikely that the proposed amendment will change the adverse impact to the tank owners and operators.

#### Rule 3737-1-07

- a. Rule 3737-1-07 impacts only responsible persons who are seeking reimbursement for corrective action costs from the Fund.
- b. The rule requires information to be provided to the Board in order to comply with the rule.
- c. The Application for Financial Assurance Fund Eligibility required by the rule is a four-page **application that can be completed by the responsible person or at the responsible person's** option, an environmental consultant. In addition, a report describing the petroleum release (closure report, site assessment report, immediate corrective actions report, etc.) must be **submitted with the application. Because these reports are required by the fire marshal's closure** assessment or corrective action rules, the only additional expenditures to the applicant are duplicating and mailing costs.

The proposed amendments to rule 3737-1-07 will not change the adverse impact to **Ohio's** tank owners and operators.

#### Rule 3737-1-09

- a. Rule 3737-1-09 impacts only responsible persons who have been determined eligible to file claims under the Fund for the reimbursement of corrective action costs from the Fund.
- b. The rule sets forth the limitations of Fund coverage.

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- c. By statute, the Fund exists to reimburse owners or operators of USTs for corrective action costs and to compensate third parties for bodily injury and property damage associated with accidental releases of petroleum from assured USTs. Therefore, claimed costs that do not meet this requirement cannot be reimbursed and are disallowed. Currently, about 15% of the costs claimed for reimbursement are disallowed. Commonly submitted costs that are not reimbursable from the Fund include corrective action costs that are higher than what are typical; costs not **necessary for or required by the fire marshal's corrective action rules**; costs associated with UST system testing, repairs, upgrades and removals; and costs not timely submitted for reimbursement.

The proposed amendments to rule 3737-1-09 will not change the adverse impact to the tank owners and operators.

#### Rules 3737-1-12 and 3737-1-12.1

- a. Rules 3737-1-12 and 3737-1-12.1 only impact responsible persons seeking monies from the Fund for the reimbursement of cleanup costs or compensation paid for third party bodily injury and property damage.
- b. Rule 3737-1-12 requires administrative time and costs for copying and printing in order to provide the information required in the Claim Reimbursement Application. A responsible person that chooses to hire a consultant to complete and submit the application on its behalf will incur **an expenditure for the consultant's services. In almost all instances, rule 3737-1-12.1** will require the responsible person to pay a consultant to estimate and prepare an explanation of the costs for pending corrective action activities. Costs incurred to comply with rule 3737-1-12.1, however, are reimbursable when claimed under the Fund. Any costs submitted for reimbursement that were not pre-approved as required are subject to a 50% reduction in the reimbursable amount.
- c. The Claim Reimbursement Application required by rule 3737-1-12 contains seven sections and is 14 pages in length, including six pages of instructions and completion checklists. Along with the application, the applicant must submit invoices; proof of payment documentation; reports and other documentation supporting the costs claimed; and copies of relevant correspondence with the fire marshal. The time necessary to complete the application and compile the information necessary for submission is variable dependent on the number of invoices and the scope of the work for which costs are being claimed. A responsible person submitting a claim for one invoice with charges for basic corrective action activities, such as groundwater sampling, will likely spend far less time preparing and submitting the application than a responsible person submitting a claim for remedial action activities that occur over a period of time. Often the preparation and submittal of the Claim Reimbursement Application is performed by the responsible **person's consultant as a courtesy to the responsible person. In the event this is not** the case, the cost for this service will depend largely upon the number of hours required to compile the supporting documentation, which can be extensive if the corrective actions for which costs are being claimed are complex. Therefore, it is estimated that the costs to complete the claim application range between \$100 and \$1,500. A request for the pre-approval of costs as

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required by rule 3737-1-12.1 is made by submitting a one page Cost Pre-Approval Application, itemized listing of the estimated costs, and if appropriate, a copy of the proposed plan required by the fire marshal for the corrective action activities. The preparation and submission of a request for the **pre-approval of costs is routinely completed by the responsible person's** environmental consultant. These costs are reimbursable when claimed under the Fund and range from \$100 to \$2,500.

The proposed amendments to rules 3737-1-12 and 3737-1-12.1 will not change the adverse impact to the tank owners and operators.

#### Rule 3737-1-15

- a. Rule 3737-1-**15 impacts all of Ohio's** petroleum tank owners and operators.
- b. The rule provides the Board with the ability to modify the standard deductible and reduced deductible amounts set forth in rule 3737-1-06. This rule arguably could adversely affect a business if the Board determines an increase to the deductible amounts is necessary to meet the financial soundness objectives set forth in section 3737.91 of the Revised Code.
- c. An increase in the deductible and reduced deductible amounts could result in an increase in expenditures for the responsible person if a petroleum release is discovered after the deductible amounts are increased and the corrective action costs exceed the deductible. If the deductible amounts are reduced however, the corrective action costs the responsible person must incur before Fund reimbursement is available would decrease.

The proposed amendments to rule 3737-1-15 will not change the adverse impact to the tank owners and operators.

#### Rule 3737-1-16

- a. Rule 3737-1-16 only impacts a responsible person, who has been determined to be eligible to claim under the Fund, when a third party files an action against the responsible person to recover costs related to bodily injury or property damage suffered as a result of a petroleum release from an assured underground storage tank.
- b. Rule 3737-1-16 requires administrative time and minimal cost for the responsible person to report information to the Board concerning the status of the third-party claim such as pending negotiations, litigation, mediations, settlements, or judgments.
- c. Notification to the Board can be made verbally or be provided by email, fax, or mail. It is estimated that such notification requires approximately **one hour of the responsible person's** time.

The proposed amendments to rule 3737-1-16 will not change the adverse impact to the tank owners and operators.

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#### Rule 3737-1-19

- a. Rule 3737-1-19 only impacts a responsible person when a third party files an action against the responsible person to recover costs related to bodily injury or property damage suffered as a result of a petroleum release from an assured UST.
- b. The rule requires the responsible person to submit a Third-Party Claim Eligibility Application in order to receive a determination of eligibility to file claims under the Fund for costs associated with bodily injury or property damages a third-party experiences as a result of an accidental **release of petroleum from the responsible person's USTs. The application** must be submitted to the Board within 30 days from the date a responsible person receives any of the following: service of a third-party complaint against the responsible person; receipt of a third-party demand for settlement; or notice of representation of a third party in a lawsuit against the responsible person. It requires administrative time and minimal costs in order to provide the information required in the application.
- c. The Third-Party Claim Eligibility Application required by the rule is five pages in length and can **be completed by the responsible person or at the responsible person's option, an environmental consultant or attorney.** In addition, a copy of the complaint, demand and/or notice of representation as well as any other available documents supporting the **third-party's claim must** be provided with the application.

The proposed amendments to rule 3737-1-19 will not change the adverse impact to the tank owners and operators.

#### **17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

The Rules Committee members, industry representatives, constituent stakeholders, and agency staff recognize that these rules could potentially adversely impact the business community, specifically **Ohio's** tank owners and operators. However, the rules are necessary to implement sections 3737.90, 3737.91, and 3737.92 of the Revised Code, and they are essential tools that ensure the long-term financial health and continued success of the Fund. Any potential adverse impacts that result from these rules are offset **by the benefit to Ohio's tank owner community** as a whole.

No significant changes are being proposed to the rules in this rule package, and the Board does not estimate an increased cost to the business community to comply with the rules if they are adopted.

#### Rule 3737-1-04

The annual per-tank fees assessed by rule 3737-1-04 serve as the primary revenue source **underwriting the Fund. Without these fees, there would be no funding source available to Ohio's tank** owners and operators to underwrite the costs necessary to remediate the environment or pay for third-party bodily injury or property damage in the event of a petroleum release. Late payment fees are assessed in accordance with section 3737.91 of the Revised Code and are intended to encourage timely payment of the annual fees. In addition, where delinquent fees are referred to the

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**Attorney General's Office for collection, the tank owner is also responsible for the payment of any** and all fees associated with collection. Again, this serves to encourage the timely payment of the annual fees and ensures **that the cost to collect a responsible person's delinquent fees are borne** solely by the responsible person and not the tank owner community as a whole. Lastly, the Board determined that the \$500 transfer fee is justified due to the administrative costs incurred to process a transfer of the certificate of coverage to the new responsible person of the petroleum UST system. The required application for a certificate of coverage, along with the notification requirements of the rule, are necessary to implement the program.

#### Rule 3737-1-07

Rule 3737-1-07 requires a responsible person to file an eligibility application in order to receive a determination of eligibility to file claims under the Fund for corrective action costs resulting from an accidental release of petroleum. This rule serves to ensure that only an eligible responsible person may seek reimbursement and receive monies from the Fund. The rule requires the director of the Fund to verify that at the time the release was first suspected or confirmed, a responsible person possessed a valid certificate of coverage for the tank from which the release occurred, **the subject tank was being operated and maintained in compliance with the fire marshal's rules, and the release** was timely reported as required by the **fire marshal's rules**.

#### Rule 3737-1-09

Rule 3737-1-09 establishes the limitations of coverage under the Fund and is essential in ensuring that only necessary, actual and reasonable costs associated with the clean-up of a petroleum release from assurable UST systems are reimbursed. By providing a listing of costs that are excluded from Fund reimbursement, responsible persons are provided with advance notice of costs not covered by the Fund thereby, helping owners and operators to make more informed decisions and control costs.

#### Rule 3737-1-12

To receive reimbursement from the Fund for corrective action costs, rule 3737-1-12 requires a responsible person to file a Claim Reimbursement Application and to document in both technical and financial terms the costs for which reimbursement is being sought. The rule helps to ensure that only those actual costs that are reasonable and necessary for corrective action are reimbursed by the Fund. Importantly, the rule also sets forth deadlines for the responsible person to file claim applications for the reimbursement of corrective action costs. In general, costs must be claimed for reimbursement within one year of the date the work was required to be completed by the fire marshal. These deadlines are necessary to enable the Board to budget and forecast the long-term liability of the Fund as well as to annually determine the amount of the per-tank fee. The claim filing deadlines **indirectly benefit Ohio's tank owners by helping to ensure reports and other documentation required** to process the request for reimbursement are readily available.

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#### Rule 3737-1-12.1

Rule 3737-1-12.1 requires responsible persons to obtain pre-approval of estimated costs before conducting certain corrective action activities. These activities include interim response actions **requiring the fire marshal's approval; remedial action plans; free product monitoring plans; free** product recovery activities if recovery continues beyond one year; and if the estimated cost exceeds \$6,000, tier 3 evaluation plans, monitoring plans, and plans to calibrate or disprove the fate and transport model. The Board adopted rule 3737-1-12.1 for two reasons. The first being that the rule provides assurance to responsible persons that the costs of the pending corrective action work will be reimbursed once incurred and claimed and secondly, the rule serves to assist the Board with controlling costs to the Fund and, thereby, helps to keep tank fees affordable.

#### Rule 3737-1-15

Increasing or decreasing the deductible amount of coverage with the Fund is one mechanism available to the Board to ensure the continued financial solvency of the Fund as well as ensuring that the annual per-tank fee **remains affordable to Ohio's petroleum UST owners and operators.** The deductibles encourage tank owners and operators to operate and maintain their underground storage tanks and related equipment in a manner that reduces the likelihood of a release. Further, **when a release does occur, it is to the responsible person's benefit to stay involved in and oversee** the corrective action activities in order to control the costs to both the responsible person and the Fund.

#### Rule 3737-1-16

To receive reimbursement from the Fund for third-party claims, the rule requires the responsible person to keep the Board informed of the status of any pending negotiations, litigation, mediations, settlements, or judgments. This information is necessary in order to allow the Board to protect the interests of the Fund by participating in any negotiation and settlement discussions as well as in any litigation.

#### Rule 3737-1-19

Rule 3737-1-19 requires the responsible person to file a Third-Party Claim Eligibility Application in order to receive a determination of eligibility to file claims under the Fund for compensation to be paid to a third-party for bodily injury or property damage resulting from an accidental release of petroleum. The rule ensures that only an eligible responsible person is able to file for and receive monies from the Fund. The rule requires the director of the Fund to verify that at the time of the release incident, a responsible person possessed a valid certificate of coverage for the tank from which the release occurred, the subject tank was being operated and maintained in compliance with **the fire marshal's** rules, and the release incident **was timely reported as required by the fire marshal's** rules.

### **Regulatory Flexibility**

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**18. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

In Ohio, as in many other states, the only mechanism available to petroleum UST owners and operators to demonstrate \$1 million of financial responsibility for taking corrective actions and compensating third parties as required by both federal and state law is the Fund.

**19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

There are no administrative fines or civil penalties associated with these rules.

**20. What resources are available to assist small businesses with compliance of the regulation?**

The Board's staff is available during customer service hours to answer questions tank owners and operators may have concerning the Board's rules. In addition, information is published on the Board's website.

Contact Information:

Petroleum UST Release Compensation Board

Phone: (614) 752-8963

Toll Free Phone: (800) 224-4659

Fax: (614) 752-8397

Website: [www.petroboard.org](http://www.petroboard.org)

Email: [info@petroboard.org](mailto:info@petroboard.org)

**Jonathan Maneval**

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**From:** Petro Information Email Account  
**Sent:** Thursday, August 9, 2018 10:44 AM  
**To:** Petro Information Email Account  
**Subject:** MEETING NOTICE || Public Hearing - Board Meeting - Rules Committee Meeting

## MEETING NOTICE

### Public Hearing

The Petroleum UST Release Compensation Board will hold a public hearing on Wednesday, September 12, 2018, at 10:00 a.m. The purpose of the hearing is to solicit public comment on rules 3737-1-03, 3737-04, 3737-1-04.1, 3737-1-07, 3737-1-08, 3737-1-09, 3737-1-12, 3737-1-12.1, 3737-1-15, and 3737-1-19, which the Board is considering amending. All interested parties are invited to attend, and all parties in attendance at that time will have the opportunity to provide comment. [Click here](#) to review the proposed rule amendments and for information concerning this public hearing.

### Board Meeting

The next Petroleum UST Release Compensation Board meeting will commence immediately following the conclusion of the public hearing being held on September 12, 2018, at 10:00 a.m.

### Rules Committee Meeting (Five-Year Rule Review)

There will be a Petroleum UST Release Compensation Board Rules Committee meeting on Wednesday, September 12, 2018. The meeting will immediately follow the Board meeting, which is anticipated to conclude at approximately 12:30 p.m. In accordance with Section 119.032 of the Ohio Revised Code, the Petroleum UST Release Compensation Board reviews each of its rules every five years to determine whether to continue without change, amend, or rescind its rules. For more information regarding the Rules Committee meeting, click [here](#).

**The hearing and meetings will be held in the  
conference room of the Board's office:**

**4151 Executive Parkway, Suite 350  
Westerville, Ohio 43081**

### **Petroleum Underground Storage Tank Release Compensation Board**

Phone: (614) 752-8963 • Toll Free Phone: (800) 224-4659 • Fax: (614) 752-8397 • Website: [www.petroboard.org](http://www.petroboard.org)

This message and any response to it may constitute a public record and thus may be publicly available to anyone who requests it.

**Jonathan Maneval**

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**From:** Petro Information Email Account  
**Sent:** Monday, December 10, 2018 11:27 AM  
**To:** Petro Information Email Account  
**Subject:** MEETING NOTICE •• Board Meeting and Finance and Rules Committee Meetings

### **Finance Committee Meeting**

There will be a Petroleum UST Release Compensation Finance Committee meeting on Wednesday, January 9, 2019, at 9:00 a.m. The committee will discuss investment options for the Fund.

### **Board Meeting**

The next Petroleum UST Release Compensation Board meeting will be held on Wednesday, January 9, 2019, at 10:00 a.m.

### **Rules Committee Meeting**

There will be a Petroleum UST Release Compensation Board Rules Committee meeting on Wednesday, January 9, 2019. The meeting will immediately follow the Board meeting, which is anticipated to conclude at approximately 12:00 p.m. In accordance with Section 119.032 of the Ohio Revised Code, the Petroleum UST Release Compensation Board reviews each of its rules every five years to determine whether to continue without change, amend, or rescind its rules. All of the Board's rules are scheduled for review as part of the five-year rule review process.

In accordance with the requirements of Executive Order 2011-01K and Chapter 107. of the Ohio Revised Code, all interested parties are invited to attend, and all parties in attendance at that time will have the opportunity to provide comment.

**The meetings will be held at  
the Board's office located at:**

**4151 Executive Parkway, Suite 350  
Westerville, Ohio 43081**

### **Petroleum Underground Storage Tank Release Compensation Board**

Phone: (614) 752-8963 • Toll Free Phone: (800) 224-4659 • Fax: (614) 752-8397 • Website: [www.petroboard.org](http://www.petroboard.org)

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**Jonathan Maneval**

---

**From:** Petro Information Email Account  
**Sent:** Tuesday, February 12, 2019 1:59 PM  
**To:** Petro Information Email Account  
**Subject:** MEETING NOTICE •• Board Meeting and Finance and Rules Committee Meetings

### **Finance Committee Meeting**

There will be a Petroleum UST Release Compensation Board Finance Committee meeting on Wednesday, March 13, 2019, at 9:00 a.m. The committee will discuss investment options for the Fund.

### **Board Meeting**

The next Petroleum UST Release Compensation Board meeting will be held on Wednesday, March 13, 2019, at 10:00 a.m.

### **Rules Committee Meeting**

There will be a Petroleum UST Release Compensation Board Rules Committee meeting on Wednesday, March 13, 2019. The meeting will immediately follow the Board meeting, which is anticipated to conclude at approximately 12:00 p.m. In accordance with Section 119.032 of the Ohio Revised Code, the Petroleum UST Release Compensation Board reviews each of its rules every five years to determine whether to continue without change, amend, or rescind its rules. All of the Board's rules are scheduled for review as part of the five-year rule review process.

In accordance with the requirements of Chapter 107. of the Ohio Revised Code, all interested parties are invited to attend, and all parties in attendance at that time will have the opportunity to provide comment.

**The meetings will be held at  
the Board's office located at:**

**4151 Executive Parkway, Suite 350  
Westerville, Ohio 43081**

### **Petroleum Underground Storage Tank Release Compensation Board**

Phone: (614) 752-8963 • Toll Free Phone: (800) 224-4659 • Fax: (614) 752-8397 • Website: [www.petroboard.org](http://www.petroboard.org)

This message and any response to it may constitute a public record and thus may be publicly available to anyone who requests it.

## BOARD EMAIL NOTICE LIST

## Exhibit A

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