



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

MEMORANDUM

TO: Starr Richmond, Petroleum UST Release Compensation Board

FROM: Ethan Wittkorn, Regulatory Policy Advocate

DATE: November 26, 2019

RE: **CSI Review – OAC Chapter 3737 Five-Year Review – Rule Amendments (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)**

On behalf of Lt. Governor Jon Husted, 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 Department as provided for in ORC 107.54.

Analysis

This Petroleum Underground Storage Tank Release Compensation Board (Board) rule package consists of eight amended rules. This rule package was submitted to the CSI Office on October 17, 2019 as part of a statutory five-year review, with the public comment period open through October 31, 2019. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI office on October 17, 2019.

Rules in this package cover the Board's policies regarding annual underground storage tank (UST) financial assurance fees, certification of compliance and financial responsibility, eligibility to file claims, costs excluded from reimbursement, requirements for filing a claim reimbursement application, requirements for requesting pre-approval of corrective action costs, modification of deductibles, third party claims, and determination of eligibility to file claims for compensation to a third party. Amendments to the rules include the removal of references to rules proposed for rescission, corrections of grammatical errors, general clarification and the removal of outdated

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requirements.

During the period of early stakeholder outreach, the board shared the proposed rules with stakeholders via email and published meeting notices to the board website. As a result of stakeholder and staff input, the board decided to make minor editorial changes to the rules and to rescind rule 3737-1-04.2, which led to changes in 3737-1-04. Changes made to rule 3737-1-09 were a direct result of input from environmental consultants. During the CSI public comment period, no comments were submitted.

The communities the rules impact include all of Ohio's petroleum tank owners and operators. This currently includes 2,650 private UST owners and an additional 1,500 publicly operated tanks. Impacts are reporting requirements, annual per tank fees of \$350, a late fee of \$1,000 per tank assessed for untimely payment, a \$500 transfer fee per facility when ownership is transferred. Additional impact include time associated with annual applications for a certificate of coverage, time associated with the completion of an application for financial assurance fund eligibility, administrative time and costs associated with filing a claim reimbursement application (between \$100-\$1,500), administrative time and cost associated with the submission of a cost pre-approval application which are reimbursable when claimed under the fund. Furthermore, are costs associated with modifications to the standard detectable, and administrative time and costs associated with the submission of a third-party claim eligibility application when third parties file an action against a responsible person to recover cost related to injury or property damage.

The Board states that the rules are necessary to meet U.S. EPA rules require all U.S petroleum UST owners to demonstrate financial responsibility and protect Ohio's land and water resources.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that the Board should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.