

**Rule Summary and Fiscal Analysis (Part A)****Petroleum Underground Storage Tank Release Compensation**

Agency Name

Division

**David Reeder**

Contact

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**3737-1-04**

Rule Number

**AMENDMENT**

TYPE of rule filing

Rule Title/Tag Line

**Annual petroleum underground storage tank financial  
assurance fee and assurability and financial responsibility  
criteria.****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: **3737.90**

5. Statute(s) the rule, as filed, amplifies or implements: **3737.91, 3737.92**

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

By statute, each year the Board must set the amount of the annual Financial Assurance Fund fee and to better mirror language in the Revised Code. Pursuant to 119.032, five year rule review.

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:

Raises the annual Financial Assurance Fund fee from \$500.00 to \$550.00 per tank to begin the 2006 fiscal year.

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 If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation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

*Not Applicable.*

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: **1/5/2005**

(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 increase revenues.

\$1,140,000

The net impact should be an increase in revenues to our agency of approximately \$1.14 million since there will be no additional expenditures associated with the proposed rule amendment. Beginning with the fiscal year 1994, the expenditures of the Financial Assurance Fund have annually exceeded revenues. To date, this deficit has been supported by \$65 million in revenue bonds issued by the Board. It is anticipated that even with the modest fee increases and an eventual decrease in claims reimbursement expenditures, this type of deficit will continue through the next two bienniums. Consequently, the proposed fiscal year 2006 fee increase will help to offset the anticipated deficit.

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:

See attachment.

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?

(a) School Districts	(b) Counties	(c) Townships	(d) Municipal Corporations
<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>

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.

Please see attachment

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? **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.

*Not Applicable.*

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

Please see attachment

(a) Personnel Costs

Please see attachment

(b) New Equipment or Other Capital Costs

Please see attachment

(c) Operating Costs

Please see attachment

(d) Any Indirect Central Service Costs

Please see attachment

(e) Other Costs

Please see attachment

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.

Please see attachment

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

N/A

**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.

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(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.

Roger Dreyer - Ohio Petroleum Marketers and Convenience Assoc. - 4242 Tuller Rd., Unit B, Dublin, Ohio 43017
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Charles Howard - Ohio Auto Dealers Assoc. - 655 Metro Pl. Suite 270, Dublin, Ohio 43017
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Brad Cole - County Commissioner's Assoc. - 37 W. Third St. Suite 650, Columbus, Ohio 43215
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Michael Cochran - Ohio Township Association - 5969 E. Livingston Ave, Columbus, Ohio 43232
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Vickie Deisner - Ohio Environmental Council - 1207 Grandview Av. Suite 201, Columbus, Ohio
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Mark Conte - Sierra Club - 36 West Gay St., Suite 314 Columbus, Ohio 43215
John Mahoney - Ohio Municipal League - 175 S Third St., Suite 510 Columbus, OH 43215

- (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.)

See attached summary

- (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 ? **No**

Is the proposed rule or rule amendment more stringent than its federal counterpart ? **No**

- (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**

Not Applicable



## Rule # 3737-1-04

**1. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons.**

In summary, the total annual aggregate amount of costs of compliance with the proposed rule is \$1.35 million to be distributed among 3,350 assurable owners/operators in the State of Ohio. The estimated average annual amount per public entity is \$201, and the estimated average annual amount per private entity is \$646. No other costs of compliance are significant enough to warrant measuring.

**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.**

The Board currently assures 517 school districts, counties, townships and municipal corporations which comprises approximately 15.0% of the Ohio underground storage tank owners/operators and 9.2% of the UST population. The proposed rule would increase the annual per-tank fee \$50 or an annual aggregate amount for public entities of \$104,050. Therefore, the average annual increase in expenditures for each public entity owning underground storage tanks is \$201. Any other costs, such as personnel costs or capital costs, are so insignificant that the cost is not measurable and in any instance, would not vary from the costs of compliance in prior fiscal years.

**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.**

The proposed rule would increase the annual underground storage tank Financial Assurance Fund (FAF) fee \$50 per tank. Approximately 22,700 USTs and 3,350 public and private owners/operators are currently assured by the FAF. Private entities comprise approximately 85% of the Ohio UST owners and 90.8% of the UST population resulting in an estimated annual increase in costs of compliance of \$364 per private entity. Naturally, the actual costs to individual entities will vary and is dependent upon the number of USTs owned/operated during the fiscal year.

No other costs, including personnel, capital costs or other indirect costs, will be impacted by the proposed rule change.

**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.**

The proposed rule would require petroleum UST owners/operators to pay an additional \$50 per tank. Although the agency will not incur additional costs associated with implementing this requirement, the average cost per local government entity will be \$201.

RULE #3737-1-04

Leaking underground storage tanks are a threat to the health of Ohio residents and to the environment. Petroleum releases can contaminate soil and drinking water and can be extremely expensive to clean up. The Petroleum Underground Storage Tank Release Compensation Board helps protect human health and the environment by providing an affordable mechanism 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. It also helps to protect Ohio's businesses and individuals from financial insolvency in the event of a release from their UST system.

The Board, by law, must set the Financial Assurance Fund annual per tank fee and deductible amount of coverage for each program year. The Fund enables Ohio's underground storage tank (UST) owners and operators to meet the federally mandated financial responsibility requirement for USTs. For many owners it is the only mechanism to pay for the costs of corrective action and third-party liability resulting from an accidental release of petroleum from a UST system.

For these reasons, it is essential that the Fund remain solvent, and it is the Board's responsibility to manage the Fund in a manner that preserves its solvency.

The primary revenue source underwriting the Fund is the annual per tank fee paid by owners and operators. During the Fund's first year in 1989, fees were collected for approximately 50,000 tanks. The number of USTs has steadily declined and, in 2004, fees have been received for approximately 23,250 USTs. The decline in the number of USTs has occurred because owners chose to remove their tanks rather than meet the federal requirement of upgrading or replacing their UST systems.

At the same time that the revenue base has been decreasing, the number of claims submitted to the Board annually is increasing. In the 1993 fiscal year the Board issued 221 settlements with a total value of \$4.5 million. In the 2004 fiscal year 655 settlements were issued and the Board reimbursed approximately \$9.75 million. To date, over \$146.5 million has been reimbursed to Ohio's UST owners and operators.

As a result of the declining number of tanks and increasing number of claims filed, the Board needs to sustain a viable level of revenue from fewer tanks and fewer owner/operators. This has resulted in increasing annual fees. In 1989, the tank fee for the standard deductible was \$150 and the fee for the reduced deductible coverage was \$300. In the 2004 fiscal year those fees were \$500 and \$650 respectively.

In the early 1990's, the federal government issued a mandate that all underground storage tanks be upgraded by 1998. Realizing that this federal requirement would mean that many tanks would be pulled out of the ground (rather than upgraded) and many petroleum releases would be discovered in the process, in 1993 the Board sold approximately \$30 million in revenue bonds to prepare for anticipated clean up expenses related to the increase in tank pulls.

Rule # 3737-1-04

The Board issued an additional \$35 million in revenue bonds in July 1998, to offset the deficit in revenues versus claims paid. The issuance of revenue bonds allows the Board to obtain substantial capital while limiting fee and deductible increases. However, it does not come without a cost. The bonds can be thought of as loans for corrective action costs taken out on behalf of the tank owners and operators, essentially creating a mortgage on corrective actions. The debt created by the bonds requires years of payments from the annual tank fee revenues.

Prior to the issuance of the bonds the Board's staff conducted a study of the Fund's potential liability. Historical data and owners surveys were used to estimate future claims expense. A pro-forma operating statement was developed which summarized the Board's financial plan and expectations and was used in the bond issuance. In order to meet future debt interest and principle payments, maintain a solvent Fund, and satisfy bond covenants, manageable fee increases will be required.

All of the above were considerations as the Rules Committee evaluated the Fund's revenue needs and formulated its recommendation to the Board.

The following data was either used or extrapolated for use in support of the findings of the recommendation:

1. Tank incidents and releases
2. Number of sites determined eligible for reimbursement by the Board
3. Dollar value of claims filed
4. Claims expenditures by fiscal year
5. Average costs for clean-up technologies
6. USTs covered by the fund by fiscal year
7. UST fees for fiscal years 1990 through 2004
8. Annual tank fee revenues for fiscal years 1990 through 2004
9. UST fee payments by date of payment for fiscal years 1990 through 2004
10. UST fee payments by amount of deductible for fiscal years 1990 through 2004