

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

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? **No**

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, the Board must set the annual fee in order to maintain the financial soundness of the Fund.

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:

The proposed change will increase the annual fee for the standard deductible from \$550.00 per tank to \$600.00 per tank. In addition, another proposed change would require a property transfer fee of \$500.00 per facility and would require any and all outstanding fees and penalties to be paid before a Certificate of Coverage will be issued.

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: **9/18/2009**

(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.

\$1,332,500

The net impact should be an increase in revenues to our agency of approximately \$1.33 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 eventual decrease in claims reimbursement expenditures, this type of deficit will continue through the next two bienniums. Consequently, the proposed fiscal year 2007 fee increase and property transfer fee 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
Yes	Yes	Yes	Yes

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.
-

(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 Store Association -
4242 Tuller Rd. Dublin, OH 43017

Charles Howard - Ohio Auto Dealers Assoc. - 655 Metro Pl. Suite 270 Dublin, OH
43017

Brad Cole - County Commissioner's Assoc. - 37 W. Broad St. Suite 650 Columbus,
OH 43215

Michael Cochran - Ohio Township Assoc. 5969 E. Livingston Ave. Columbus, OH
43232

John Mahoney - Ohio Municipal League - 175 S Third St. Suite 510
Columbus, OH 43215

Vicki Deisner - Ohio Environmental Council - 1207 Granview Ave #201 Columbus,

OH 43212

Mark Conte - Sierra Club-Central Ohio Group - 36 W Gay St., Suite 314 N. High St #409 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
Appendix A**

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 to increase the annual per-tank fee by \$50 is \$1,125,000 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 \$360.

The total annual aggregate amount of compliance with the proposed rule to assess a \$500 per facility transfer fee is \$207,500. Approximately 99% of these costs will be assessed to private entities.

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 516 school districts, counties, townships and municipal corporations which comprises approximately 15.4% 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 \$103,500. Therefore, the average annual increase in expenditures for each public entity owning underground storage tanks is \$201.

Public entities annually purchase approximately five facilities. The total annual cost of the proposed \$500 per facility transfer fee for public entities will be \$2,500.

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. In addition a transfer fee of \$500 per facility will be assessed upon each purchaser of USTs. With respect to the \$50 per tank fee increase, the Fund currently assures approximately 22,500 USTs and 3,350 public and private owners/operators. Private entities comprise approximately 84.6% of the Ohio UST owners and 90.8% of the UST population resulting in an estimated annual increase in costs of compliance of \$360 per private entity. With respect to the \$500 transfer fee, based on a five-year average, 415 facilities are transferred each year. A full 99% of the facilities transferred are purchased by private entities. Naturally, the actual costs to individual entities will vary and is dependent upon the number of USTs owned/operated and the number of UST facilities purchased during the fiscal year.

No other costs, including 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 and require purchasers of USTs to pay a \$500 transfer fee for each facility purchased. Although the agency will not incur additional costs associated with implementing these requirements, the average cost relative to the \$50 fee increase per local government entity will be \$201. The \$500 transfer fee per facility is assessed only to the purchaser of USTs. Based on a five-year average, public entities annually purchase five facilities.

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 49,000 tanks. The number of USTs has steadily declined and, for 2005, fees were received for approximately 22,200 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 2005 fiscal year 738 settlements were issued and the Board reimbursed approximately \$10 million. To date, over \$159.1 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 2005 fiscal year those fees were \$550 and \$700 respectively.

In 1993 the Board issued \$30 million in revenue bonds to provide a modest fund in anticipation of an increase in claims prior to the 1998 UST upgrade deadline. 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 allowed the Board to obtain substantial capital while limiting fee and deductible increases. However, it did not come without a cost. It can be thought of as the Board taking out

Rule # 3737-1-04

a loan for corrective action costs 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.

In 2003 the Board commissioned a study by an independent firm to estimate the reserve for unpaid claims as of June 30, 2002. The study is updated annually and used in conjunction with the Board's assumptions regarding future operating expenses and revenue to develop pro-forma operating statements summarizing the Board's financial plan and expectations through fiscal year 2013.

Lastly, the Board has historically transferred Certificates of Coverage at no cost to the purchaser of USTs, i.e. fees are not assessed to the new owner of the USTs. However, property transfers often require otherwise unnecessary exploratory procedures to ensure that a release has not occurred at the facility, thereby, creating a potential for liability to the Fund. In addition, operating costs associated with transferring a Certificate of Coverage mirror those incurred with the initial review and issuance of a Certificate. As a result, the Board is proposing a \$500 per facility transfer fee, similar to that imposed by the Bureau of Underground Storage Tanks, be assessed to the purchaser.

All of the above were considerations as the Finance Committee evaluated the Fund's revenue needs and formulated its recommendation to the Board to increase fees in order to meet future debt interest and principle payments, maintain a solvent Fund and satisfy bond covenants, manageable fee increases are required.

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

1. Number of sites pending eligibility review
2. Number of sites determined eligible for reimbursement by the Board
3. Dollar value and status of claims filed
4. Claims expenditures by fiscal year
5. USTs covered by the fund by fiscal year
6. UST fees for fiscal years 1990 through 2003
7. Annual tank fee revenues for fiscal years 1990 through 2003
8. UST fee payments by amount of deductible for fiscal years 1990 through 2003
9. Historical amounts of disallowed costs
10. Release dates
11. Number of sites denied eligibility for reimbursement by the Board