

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

Agency Name

Division

Jonathan Maneval

Contact

**50 West Broad Street, Suite 1500 Columbus OH
43215-0000**

Agency Mailing Address (Plus Zip)

614-752-8963

Phone

Fax

jmaneval@petroboard.org

Email

3737-1-04

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

**Annual petroleum underground storage tank financial
assurance fee, certification of compliance, and financial
responsibility.****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:

The Petroleum Underground Storage Tank Release Compensation Board proposes to amend Ohio Administrative Code rule 3737-1-04 to reduce the annual Financial Assurance Fund fee from \$600 per tank to \$500 per tank.

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 rule change will reduce the annual Financial Assurance Fund fee from \$600 per tank to \$500 per tank.

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. If applicable, indicate each specific paragraph of the rule that has been modified:

Not Applicable.

12. 119.032 Rule Review Date: **8/3/2014**

(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 decrease revenues.

\$2 million annually.

The Board annually reviews the financial solvency of the Fund. Due in large part to a decrease in the number of claims filed against the Fund in recent years, annual revenues currently exceed the Fund's annual expenses, including claim reimbursements. The Fund's claim liability is estimated using actuarial methodology each fiscal year. The estimated liability for all claims outstanding as of June 30, 2013 was \$27.7 million. Based on projections, this amount is expected to be paid over the next five years using existing unobligated Funds as well as the reduced revenue anticipated to be received during this same five-year time period.

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:

By decreasing the annual fee from \$600 per tank to \$500 per tank, the cost of compliance will decrease \$2 million annually for Ohio's tank owners and operators. There are currently 20,600 underground storage tanks owned by 3,200 public and private entities. The average savings for each owner is estimated to be \$640. The actual savings to each owner depends solely on the number of tanks owned.

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.

S.B. 2 (129th General Assembly) Questions

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **Yes**

19. Specific to this rule, answer the following:

A.) Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? **Yes**

All petroleum underground storage tank owners are required to demonstrate Financial Responsibility by obtaining a Certificate of Coverage with the Board. The Board provides \$1 million, less a deductible, for clean up costs and third-party property and bodily injury damages associated with releases from petroleum underground storage tanks.

B.) Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? **Yes**

Rule 3737-1-04 does not impose civil or criminal penalties on underground storage tank owners or operators who fail to comply. However, owners and operators who do not timely remit the annual fee may be subject to the assessment of late payment fees. Financial Assurance Fund (Fund) fees are assessed annually and are required for all petroleum underground storage tanks (USTs) in the ground at any time between July 1 and June 30. If the annual fee is not remitted by July 1, a notification is issued advising the owner or operator of the non-compliance and that a late payment fee will be assessed if the annual fee is not paid within 30 days. If the annual fee remains unpaid at the end of the 30 days, an Order Pursuant to Law is issued requiring payment of the annual fee and assessing a late payment fee of \$100/tank per month up to a maximum of \$1,000/tank.

If an UST owner fails to comply with the Order, the director of the Fund notifies the State Fire Marshal. In addition, division (G) of section 3737.91 of the Revised Code authorizes the director of the Fund to request the Ohio Attorney General to bring a civil action for appropriate relief, including a temporary restraining order or preliminary or permanent injunction.

C.) Does this rule require specific expenditures or the report of information as a

condition of compliance? **Yes**

The proposed annual fee is \$500 per tank for coverage at the standard \$55,000 deductible. Owners of six or fewer tanks may elect to pay an additional \$200 per tank for coverage with a reduced deductible of \$11,000.

Payment of the annual fee is required before a Certificate of Coverage may be issued to a tank owner.

The proposed rule amendment does not require information to be reported.

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.

Approximately 1,700 (8.4%) of Ohio's petroleum underground storage tanks are owned by school districts, counties, townships and municipal corporations. Because the proposed rule decreases the annual per-tank fee by \$100, the cost of compliance is estimated to decrease by an annual aggregate amount of \$170,000 for public entities or an average of \$358 per public entity owning petroleum underground storage tanks.

No other costs of compliance are significant enough to warrant measuring.

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.

Because the proposed rule amendment will decrease the annual fee by \$100 per

tank, the cost of compliance will likewise decrease. Given there are approximately 1,700 petroleum underground storage tanks owned by 475 public entities, it is estimated the cost of compliance will decrease by \$170,000 for these entities, resulting in an average annual savings of \$358 per public entity owning petroleum underground storage tanks.

Naturally, the actual decrease in the cost of compliance to each entity will vary and is solely depended upon the number of petroleum underground storage tanks owned/operated.

(a) Personnel Costs

No personnel costs will be impacted by the proposed rule change.

(b) New Equipment or Other Capital Costs

No new equipment or other capital costs will be impacted by the proposed rule change.

(c) Operating Costs

No operating costs will be impacted by the proposed rule change.

(d) Any Indirect Central Service Costs

No indirect costs will be impacted by the proposed rule change.

(e) Other Costs

No other 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.

There are no new requirements imposed by the proposed rule. By decreasing the annual fee by \$100 per tank, the result is an average savings of \$358 per public entity owning petroleum underground storage tanks.

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

Any impact on economic development should be positive since the proposed rule amendment decreases the annual per-tank fees.

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.

See Attachment A

(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.)

The Petroleum Underground Storage Tank Release Compensation Board serves Ohio's UST owners and operators by overseeing the Financial Assurance Fund, which provides a mechanism for Ohio's UST owners and operators to meet U.S. Environmental Protection Agency regulations requiring them to demonstrate financial capability to pay for potential damage caused by petroleum releases from

their UST system.

Petroleum releases can contaminate soil and drinking water and can be extremely expensive to clean up. The Fund helps to protect human health and the environment by providing an affordable mechanism to underwrite the costs necessary to remediate the environment and 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 annual per tank fee and deductible amount of coverage for each program year. The Board's Finance Committee evaluates the Fund's revenue needs for claim reimbursements and operating costs and the projected number of tanks to be covered in the upcoming fiscal year. Using this information, it formulates a recommendation to the Board. After reviewing the information available, the committee recommended decreasing the annual per-tank fee by \$100, and the Board voted to amend rule 3737-1-04 to decrease fees.

All of the following data was used or extrapolated for use in support of the findings of the Finance Committee's recommendation:

1. The unobligated Fund balance as of July 1, 2013.
2. The estimated unpaid claim liability.
3. Historical and projected revenue collections.
4. The historical and projected number of USTs billed and covered by the Fund.
5. The historical and projected administrative and fixed asset expenditures.
6. The historical and projected claims reimbursement expenditures.

(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 ?

Yes

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

Not Applicable

(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**

Contact	Dept/Company	Email
Mike Alexander	American Environmental Corporation	malexander@aecoh.com
Stephanie D. Black	American Environmental Corporation	SBlack@aecoh.com
Carol F. Doe	Antea USA, Inc.	carol.doe@anteagroup.com
Alan Gillespie	ARCADIS	alan.gillespie@arcadis-us.com
Dan Bremer	ARCADIS	cindy.capell@arcadis-us.com
Cindy Capell	ARCADIS	Dan.bremer@arcadis-us.com
Thomas Hite	ARCADIS	thomas.hite@arcadis-us.com
Dan Adams	ATC Associates, Inc.	dan.adams@atcassociates.com
Doug Darrah	ATC Associates, Inc.	douglas.darrah@atcassociates.com
Howard Silver	Attorney at Law	hsilver@columbus.rr.com
James Sutphin	Barney's Convenience Mart, Inc.	jsutphin@barneys-inc.com
John Bruck	BHE Environmental, Inc.	jbruck@bheenvironmental.com
A Ritter	BJAAM Environmental Inc.	Aritter@bjaam.com
Brent McPherson	BJAAM Environmental Inc.	bmcpherson@bjaam.com
Brian D. Mitchell	BJAAM Environmental Inc.	bmitchell@bjaam.com
Jodi Handlin	BJAAM Environmental Inc.	jhandlin@bjaam.com
Michael Baker	BJAAM Environmental Inc.	mbaker@bjaam.com
Bob Engle	Campbell Oil Company	bengel@campbelloil.com
Susan Sprouse	Cardno ATC	susan.sprouse@cardnoatc.com
Art Schmitz	Certified Oil Company	aschmitz@certifiedoil.com]
Alan Cubberley	Circle K	acubberley@circlek.com
Brad Cole	County Commissioners Association	bcole@ccao.org
Melissa Witherspoon	Delta Environmental Consultants, Inc.	mwitherspoon@wattersonenviro.com
Mike Stipp	District Petroleum	mikes@hymiler.com
Scott Earhart	Earhart Petroleum Inc.	searhart@earhartpetroieum.com
Tracy A. Sullivan	Englefield Oil Co.	tsullivan@englefieldoil.com
Karen S. Reese	FirstEnergy Corp.	reese@firstenergycorp.com
Brian Stonemetz	Flynn Environmental, Inc.	brian@flynnenvironmental.com
Bill Barth	GES, Inc.	BBarth@gesonline.com
Bethannm Blackburn	GES, Inc.	BBlackburn@gesonline.com
Steve Betts	GES, Inc.	sbetts@gesonline.com
Mike Scheponik	GetGo	mike.scheponik@gianteagle.com
Lou Vitantonio	Greater Cleveland Automotive Dealers Association	gcada@gcada.org
Kevin Miller	Hartley Co.	aimholt@thehartleyco.com
Barbara Knecht	HZW Environmental Consultants, LLC	bknecht@hzwenv.com
Lucas Anthony Alexander	HZW Environmental Consultants, LLC	lalexander@hzwenv.com
Scott Nein	Independent Insurance Agents of Ohio	piaa@piaaohio.com
Terry Wilfong	Kemron Environmental Services	tlwilfong@kemron.com
Dave Miller	Kroger Company	Dave.Miller@kroger.com
Ashley Collier	Kroger Company	Ashley.Collier@Kroger.com
Tom Berger	Lykins Oil Co.	tom.berger@lykinscompanies.com
Nichoie Martin	Musick's Service Station Maintenance, Inc.	nmartinmssm@hotmail.com
Joe O'Brien	O'Brien Technical Services, Inc.	obejoe@roadrunner.com
James R. Mitchell	Ohio Auto Dealers Association	webmaster@oada.com
Corey Hawkey	Ohio Board of Regents	chawkey@regents.state.oh.us
Kristin Clingan	Ohio Chamber of Commerce	occ@ohiochamber.com
David W. Field	Ohio Cleaner's Association	david@assnoffices.com
	Ohio Contractor's Association	info@ohiocontractors.org

BOARD EMAIL NOTICE LIST

Attachment A

Contact	Dept/Company	Email
Lora Miller	Ohio Council of Retail Merchants	info@ohioretailmerchants.com
Glenn Sprowls	Ohio County Engineer's Association	gsprowlis@ceao.org
Linda Brown	Ohio Department of Commerce	Linda.Brown@com.state.oh.us
	Ohio Environmental Council	OEC@theoec.org
	Ohio Farm Bureau Federation	info@ouohio.org
Richard Sites	Ohio Hospital Association	oha@ohanet.org
	Ohio Manufacturer's Association	oma@ohiomfg.com
John Mahoney	Ohio Municipal League	jmahoney@omunileague.org
Terry Fleming	Ohio Petroleum Council	ohio@api.org
Bill Kasson	Ohio Power Company	wnkasson@aep.com
Damon F. Asbury	Ohio School Board Association	dasbury@ohioschoolboards.org
Michael Cochran	Ohio Township Association	Cochran@ohiotownships.org
Larry Woolum	Ohio Trucking Association	lwoolum@ohiotruckingassn.org
Tim Bechtold	Ohio Wholesale Beer/Wine Association	info@wbwao.org
David Biemel	OPMCA	dbiemel@opmca.org
Jennifer Rhoads	OPMCA	jrhoads@opmca.org
Ed Weglarz	OPRRA	ssdami@voyager.net
Andrew D. Shrock	Parsons Engineering	andrew.shrock@parsons.com
	Partners Environmental Consulting	info@partnersenv.com
Joey Cupp	Pilot Travel Centers	joey.cupp@pilottravelcenters.com
Emily Mackenzie	Pinnacle Environmental Management Support, Inc.	emackenzie@pinnacleems.com
Lisa Magowan	Pinnacle Environmental Management Support, Inc.	lmagowan@pinnacleems.com
James A. Inman	Professional Service Industries, Inc. (PSI)	jim.inman@psiusa.com
Jeffrey Erb	Saneholtz McKarns, Inc.	jeff@saneholtz-mckarns.com
Ryan Mason	Sierra Club-Central Ohio Group	ryananthonymason@gmail.com
Ricki Slattery Starrett	Slattery Oil Co Inc	ricki@slatteryoil.com
Benny J. Reed	Speedway, LLC	bjreed@ssallc.com
Will Latt	Speedway, LLC	welatt@speedway.com
Toby Rickabaugh	Speedway, LLC	TARickabaugh@speedway.com
Jeff Bood	Spence Environmental	jeff@spenceenv.com
Jeff Bood	Spence Environmental Consulting, Inc.	jeff@spenceenv.com
Stacy Cox	SRW Environmental Services, Inc.	coxst@srwenvironmental.com
Mark Rhinehart	SRW Environmental Services, Inc.	rhineham@srwenvironmental.com
Christie Kuhlmann	Stantec Consulting Services, Inc.	christie.kuhlmann@stantec.com
William Morris	State Library of Ohio	wmorris@library.ohio.gov
Jonathan Zanders	Stone Environmental Engineering & Science, Inc.	jonzanders@stoneenvironmental.com
Anne Connelly	Sunoco, Inc.	ACCONNELLY@sunocoinc.com
Mike Byrne	Sunoco, Inc.	mbyrne@sunocoinc.com
Patti Booker	SW Ohio Garage/Gas Dealer's Association	director@soggda.com
Sonja Ison	Swiftly Oil Co., Inc.	eca@swiftlyoil.com
Kevin P. Reid, P. G.	Terracon Consultants	kpreid@terracon.com
Mike Cukauskas	TH Midwest Inc.	mike.cukauskas@minitmarkets.com
David Plummer	TravelCenters of America	dplummer@ta-petro.com
Barb Yenke	Triumph Energy	byenke@triumphenergy.com
David P. Nye	Truenorth Energy LLC	DNYE@Truenorth.org
Kristin Watt	Vorys, Sater, Seymour & Pease	KLWatt@vorys.com
Kelly Bartholomew		Kbartholomew@ascendresidential.com