

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 3737-1-04

Rule Type: Amendment

Rule Title/Tagline: Annual petroleum underground storage tank financial assurance fee, certification of compliance, and financial responsibility.

Agency Name: Petroleum Underground Storage Tank Release Compensation Board

Division:

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I. Rule Summary

1. **Is this a five year rule review?** No
 - A. **What is the rule's five year review date?** 7/31/2024
2. **Is this rule the result of recent legislation?** No
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 3737.90
5. **What statute(s) does the rule implement or amplify?** 3737.91, 3737.92
6. **What are the reasons for proposing the rule?**

The proposed rule amendment is being filed to address concerns raised by stakeholders.

7. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

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, demonstration of financial responsibility for the deductible amount of coverage with the Fund, certification of compliance with applicable rules for USTs adopted by the fire marshal, 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 a newly installed UST is placed in service or when a UST has been 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 to address concerns raised by stakeholders regarding the issuance of a certificate of coverage for a newly installed UST system and the timeframe for transferring a certificate of coverage to a new responsible person. The Board is recommending to change paragraph (F)(1) of rule 3737-1-04 to establish that a responsible person must notify the director immediately upon introducing a regulated petroleum product into a newly installed UST rather than at the time a newly installed UST system is placed in service, which could result in a certificate of coverage being issued with an earlier effective date. In addition, language was added to the paragraph to clarify that the responsible person is only assessed annual fees for the fiscal year in which a regulated petroleum product was first introduced into the UST system or July 1, 1989, whichever is later, and any subsequent fiscal years.

The Board is also proposing to amend paragraph (F)(2)(a) of rule 3737-1-04 to clarify that a transfer of a UST occurs when ownership of the UST transfers to a new responsible, i.e. owner. An existing certificate of coverage will be transferred to the new responsible person with no lapse in coverage, provided the director is notified within 30 days of the date of transfer and the new responsible person takes the actions necessary to establish a certificate of coverage within 30 days of the assessment of any applicable fees.

- 8. Does the rule incorporate material by reference? No**
- 9. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.**

Not Applicable

- 10. If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

Not Applicable

II. Fiscal Analysis

- 11. Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.**

This will have no impact on revenues or expenditures.

Not Applicable

Not Applicable

- 12. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

There are no new costs of compliance resulting from the proposed amendment to the rule.

The cost of compliance associated with the proposed rule includes the administrative cost to prepare and submit the yearly Application for Certificate of Coverage/Fee Assessment Statement and the annual per-tank fee of \$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.

- 13. Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No**

- 14. Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No**

- 15. If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.**

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 Attorney General's Office for collection, the tank owner is 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 tank system.

III. Common Sense Initiative (CSI) Questions

16. Was this rule filed with the Common Sense Initiative Office? Yes

17. Does this rule have an adverse impact on business? Yes

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 UST owners and operators are required to demonstrate financial responsibility by obtaining a Certificate of Coverage from the Board. The Fund provides up to \$1 million, less a deductible, for the reimbursement of clean-up costs and compensation to third parties for property damage and bodily injury resulting from accidental releases of petroleum from USTs.

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? No

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. Fund fees are assessed annually and are required for all petroleum 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, the director of the Fund may request the Ohio Attorney General to bring an action for appropriate relief.

C. Does this rule require specific expenditures or the report of information as a condition of compliance? Yes

There are no new expenditures or reporting requirements resulting from the proposed rule amendment.

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. The new responsible person of a UST system is also 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.

D. Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? Yes

The proposed rule amendment will not further reduce the revenue or increase the expenses of the lines of business of which it will apply.

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. The new responsible person of a UST system is also subject to a transfer fee.

IV. Regulatory Restrictions (This section only applies to agencies indicated in R.C. 121.95 (A))

18. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? No

A. How many new regulatory restrictions do you propose adding to this rule?

Not Applicable

B. How many existing regulatory restrictions do you propose removing from this rule?

Not Applicable

- C. If you are not removing existing regulatory restrictions from this rule, please list the rule number(s) from which you are removing restrictions.**

Not Applicable