

3737-1-04

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

- (A) Effective April 1, 1991, and each year thereafter in which the unobligated balance of the financial assurance fund does not exceed forty-five million dollars on the date of the board's determination of the annual financial assurance fee for the succeeding fiscal year, the board shall assess a fee for each tank comprising an underground storage tank or an underground storage tank system that contains or has contained petroleum and for which a responsible person is required to demonstrate financial responsibility.

In the event that the unobligated balance of the financial assurance fund exceeds forty-five million dollars on the date of the board's determination of the annual financial assurance fee for the succeeding fiscal year, the board may assess a fee in the year to which the determination applies only to the extent required in or by, or necessary to comply with covenants or other requirements in, revenue bonds issued under sections 3737.90 to 3737.948 of the Revised Code or in proceedings or other covenants or agreements related to such bonds.

- (B) The basis for the calculation of the annual fee will include but will not be limited to the amount needed to ~~maintain the required fifteen million dollar unobligated balance as a minimum financial soundness level, the costs incurred by the fund, both actual and estimated, and the tank population.~~ meet financial soundness objectives set forth within section 3737.91(C) of the Revised Code.
- (C) The director of the fund shall notify each responsible person by May first of each year of the annual fee. In the year in which an annual fee is not assessed, the director of the fund will provide reasonable notification to responsible persons of the non-assessment of fees.
- (D) The annual fee is due no later than July first of each year in which an annual fee is imposed. In the event the director determines that a responsible person fails to pay the fee by July first of the year in which the fee is imposed, the director of the fund shall notify the responsible person of the non-payment. If the responsible person fails to submit the fee within thirty days after the notification of non-payment has been mailed, the director of the fund shall issue an order by certified mail directing the responsible person to pay the annual fee and a late fee of up to one thousand dollars per tank. If the responsible person fails to comply with the order within thirty days after the issuance of the order, the director shall notify the fire marshal of the non-compliance and may request the attorney general to bring an action for appropriate relief. No retroactive coverage shall be extended in situations where responsible persons have initially failed to pay fees but later did so, regardless of whether they received notification by the director of such failure.

(E)

- (1) Except as limited by rule 3737-1-04.1 of the Administrative Code, for all underground storage tanks registered with the fund on or after July 1, 1994, upon receipt of full payment due of the annual fee and any past fees owed, upon demonstration of financial responsibility as required by rule 1301:7-9-05 of the Administrative Code, and upon certification by the responsible person and verification by the director or director's designee that the underground storage tank is assurable pursuant to the criteria set forth in paragraph (E)(3) of this rule; the director shall issue a certificate of coverage. Payment of the annual fee and satisfaction of assurability and financial responsibility criteria for the succeeding fiscal year on or before the first of July will entitle the responsible person to a certificate of coverage in effect for the entire fiscal year; payment of the annual fee and satisfaction of assurability and financial responsibility criteria for the current fiscal year after the first of July will result in a certificate of coverage effective in that fiscal year on and after the date the board received full payment due and satisfaction of assurability and financial responsibility criteria. The failure to do any of the following will result in the non-issuance or revocation of a certificate of coverage:
 - (a) Pay any annual fee authorized by division (B) of section 3737.91 of the Revised Code or supplemental fee authorized by division (C) of section 3737.91 of the Revised Code;
 - (b) Demonstrate and maintain financial responsibility as required by rule 1301:7-9-05 of the Administrative Code;
 - (c) Demonstrate and maintain assurability criteria set forth in paragraph (E)(3) of this rule; or
 - (d) Pay any applicable penalty fee assessed pursuant to this chapter.
- (2) Where ownership of an underground storage tank has been transferred and notice has been given to the director in accordance with paragraph (F) of this rule, a new certificate of coverage shall be issued to the new underground storage tank owner for the fiscal year in which the transfer occurred provided that the new owner demonstrates and maintains financial responsibility and assurability criteria.
- (3) The director shall determine that an underground storage tank is an assurable tank system upon certification by the responsible person and verification by

the director or the director's designee that the following criteria are met:

- (a) The underground storage tank system meets statutory definitions contained in divisions (P) and (Q) of section 3737.87 of the Revised Code and contains or has contained petroleum as that term is defined in division (J) of section 3737.87 of the Revised Code; and
 - (b) For each petroleum underground storage tank system for which a certificate of coverage is sought, the responsible person is in compliance with applicable rules for petroleum underground storage tank systems that have been adopted by the fire marshal under section 3737.88 of the Revised Code.
- (4) The director shall not accept the annual petroleum underground storage tank financial assurance fee required by this rule and shall not issue a certificate of coverage for any tank that does not meet the requirements of paragraph (E)(3)(a) of this rule. The director shall accept the annual petroleum underground storage tank financial assurance fee required by this rule but shall not issue a certificate of coverage for any tank that meets the requirements of paragraph (E)(3)(a) of this rule but does not meet the requirements of paragraph (E)(3)(b) of this rule.
- (5) Where a certificate of coverage is to be denied because the criteria of this rule for issuance are not satisfied, the director shall issue a notice of pending denial to the responsible person. The responsible person shall have thirty days from the mailing of such notice to either provide evidence of compliance with all fund assurability requirements or take all necessary steps to correct non-assurability. If, after thirty days from the mailing of the notice, the responsible person fails to resolve the non-assurability issues, the director shall issue a determination of denial. The responsible person may appeal such a denial but must do so no later than thirty days from the mailing of the determination.

Once a certificate of coverage has been issued, it may be revoked at any time upon a finding by the director that the certification of assurability was based on fraud, misrepresentation, or mistake or a finding that the assurability criteria are no longer being satisfied for the tank. Where a certificate of coverage is to be revoked, the director shall issue a notice of pending revocation to the responsible person. The responsible person shall have thirty days from the mailing of such notice to either provide evidence of compliance with all fund assurability requirements or take all necessary steps to correct non-assurability.

If, after thirty days from the mailing of the notice, the responsible person fails

to resolve the non-assurability issues, the director shall issue a determination of revocation. The responsible person may appeal such a revocation but must do so no later than thirty days from the mailing of the determination. The director shall provide the fire marshal with a copy of any determination issued pursuant to this rule.

Where assurability requirements are not satisfied at the time a petroleum release is suspected or confirmed, the certificate is invalid for purposes of coverage and shall not entitle a responsible person to fund reimbursement, regardless of whether or not the certificate has been revoked.

- (F) In the event that a newly installed underground storage tank is placed in service or ownership of an underground storage tank is transferred, the responsible person shall, within thirty days from the transfer or from placing petroleum in the underground storage tank, notify the director of the new underground storage tank's existence or the transfer. In the event that an underground storage tank exists for which a certificate of coverage was not issued in the previous fiscal year, due to an omission, intentional or unintentional, by the responsible person, the responsible person shall give immediate notice of those facts to the director. Upon receipt of notice of a newly installed, transferred, or existing underground storage tank, required by this paragraph of this rule, the director shall notify the responsible person by certified mail of the assessment of any fees applicable.

The responsible person shall tender the fees assessed no later than thirty days from date of notification of fees. If the responsible person fails to submit the fees within thirty days after the notification has been mailed, the director of the fund shall notify the responsible person of the non-payment. If the responsible person fails to submit the fee within thirty days after the notification of non-payment has been mailed, the director of the fund shall issue an order by certified mail directing the responsible person to pay the annual fees and a late fee of up to one thousand dollars per tank. If the responsible person fails to comply with the order within thirty days after the issuance of the order, the director shall notify the fire marshal of the non-compliance and may request the attorney general to bring an action for appropriate relief. Where a responsible person has failed to inform the director, as is required by this rule, the director is not required to notify the responsible person of fees owed. For purposes of this paragraph of this rule, the responsible person for a transferred underground storage tank shall be the transferee.

- (G) A responsible person may file with the board written objections to any order or determination of the director issued pursuant to this rule, no later than thirty days from the mailing of the order or determination. The board, upon receipt of the objections, shall appoint a referee to conduct an adjudication hearing in accordance with section 119.09 of the Revised Code.

(H) The amount of the annual fee is five hundred fifty dollars per tank.

(I) The responsible person shall maintain with the director a current mailing address at which determinations, notices, and orders may be sent.

Effective:

R.C. 119.032 review dates: 01/05/2005

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 3737.90
Rule Amplifies: 3737.91, 3737.92
Prior Effective Dates: 8/1/90, 4/25/91, 5/4/92, 4/26/93, 7/1/94, 7/1/95,
7/1/96, 4/1/97, 4/1/99, 9/18/99, 4/1/00, 4/1/01, 7/1/03,
4/1/04