

## 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?** 7/31/2019
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 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 \$400 per tank to \$350 per tank.

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 owners and operators (responsible persons) for establishing coverage with

the Financial Assurance Fund (Fund), including the payment of the annual per-tank fee, certification of compliance with applicable rules for underground storage tanks adopted by the fire marshal, demonstration of financial responsibility for the deductible amount of coverage with the Fund, and, if applicable, compliance with the coverage reinstatement requirements of rule 3737-1-04.1. 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 further requires the responsible person to provide notice to the director when installation of an underground storage tank has occurred, and when ownership of an underground storage tank has transferred. The rule establishes the process for transferring the Certificate of Coverage to the new responsible person and establishes the criteria for the issuance of the Certificate of Coverage when a certificate was not in effect at the time of transfer. Lastly, the rule provides the responsible person with the right to file an objection to an order to pay fees or to a determination denying or revoking a Certificate of Coverage.

The proposed rule change will reduce the annual Fund fee from \$400 per tank to \$350 per tank.

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. 121.71 to 121.76, 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.**

No changes are being made in the revised filing. "DRAFT - Not Yet Filed" has been removed from the header.

## **II. Fiscal Analysis**

11. **As a result of this proposed rule, please estimate the increase / decrease in revenues or expenditures affecting this agency, or the state generally, in the current biennium or future years. If the proposed rule is likely to have a different fiscal effect in future years, please describe the expected difference and operation.**

This will decrease revenues.

\$1,017,500

Fund fees are received annually for approximately 20,350 underground storage tanks. A \$50 per tank fee reduction would decrease revenues by just over \$1 million.

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

By decreasing the annual fee from \$400 per tank to \$350 per tank, the cost of compliance will decrease about \$1 million annually for Ohio's tank owners and operators. There are currently approximately 3,200 owners of underground storage tanks. Therefore, the average annual savings for each owner is estimated to be \$320. The actual savings to each owner depends solely on the number of tanks owned.

**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**

### **III. Common Sense Initiative (CSI) Questions**

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

**16. 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 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. Fund fees are assessed annually and are required for all petroleum underground storage tanks 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 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 \$350 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.