

# CSI - Ohio

## The Common Sense Initiative

### Business Impact Analysis

Agency Name: Petroleum UST Release Compensation Board

Regulation/Package Title: Annual Financial Assurance Fund Fee Change

Rule Number(s): 3737- 1-04

Date: December 16, 2013

**Rule Type:**

☐ New  
☒ Amended

☐ 5-Year Review  
☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

#### **Regulatory Intent**

**1. Please briefly describe the draft regulation in plain language.**

*Please include the key provisions of the regulation as well as any proposed amendments.*

This rule prescribes the annual requirements of petroleum underground storage tank owners and operators for establishing coverage with the Financial Assurance Fund, including the payment of an annual per-tank fee. The Petroleum Underground Storage Tank Release

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117  
[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)

Compensation Board proposes to amend Ohio Administrative Code rule 3737-1-04 to reduce this annual fee from \$600 per tank to \$500 per tank.

Because this rule is being amended and not subject to a five-year review, the focus will be on the impact of the amendment only.

**2. Please list the Ohio statute authorizing the Agency to adopt this regulation.**

Sections 3737.90 and 3737.91 of the Ohio Revised Code.

**3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

*If yes, please briefly explain the source and substance of the federal requirement.*

While Ohio Administrative Code 3737-1-04 itself is not a regulation, the Board and the Fund it manages were created to satisfy federal EPA regulations requiring all U.S. petroleum underground storage tank owners to demonstrate \$1 million of financial responsibility for taking corrective action and compensating third parties for bodily and property damage caused by accidental releases from petroleum underground storage tank systems [40 CFR Part 280, Subpart H].

**4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

Not Applicable.

**5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

The Financial Assurance Fund (Fund) fees assessed for petroleum underground storage tanks serve as the primary revenue source underwriting the Fund. The Fund is necessary to provide Ohio's tank owners and operators with 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 underground storage tank systems.

**6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

The Board will continue to annually assess the financial soundness of the Financial Assurance Fund, and determine whether the projected annual revenues are sufficient to continue to compensate Ohio's petroleum underground storage tank owners and operators for taking necessary corrective action and compensating third parties for bodily and property damage caused by accidental releases of petroleum.

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## **Development of the Regulation**

### **7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

*If applicable, please include the date and medium by which the stakeholders were initially contacted.*

On October 1, 2013, agency stakeholders were notified by email that the Petroleum UST Release Compensation Board's Finance Committee would be meeting to discuss short and long term financial projections for the Financial Assurance Fund, and the discussions could cause the committee to draft changes to the rule. The email and stakeholder distribution list are attached as Exhibit A. The notice was also published on the Board's website, posted at the Board's office and sent to Gongwer News Service.

On November 8, 2013, the Board's Finance Committee, consisting of the Board Chair, Jim Rocco, representing petroleum refiners; Vice-Chair John Hull, representing engineers with geology experience and not associated with the petroleum industry; and Bruce Kranz, representing the insurance industry with experience in casualty and fire or pollution liability insurance met between 10:00 am and 11:00 am. In addition, the following stakeholders attended: David Biemel representing the Ohio Petroleum Marketers & Convenience Store Association, Christina Polesovsky representing the Ohio Petroleum Council and Tom Stephenson representing Stephenson Oil Co.

### **8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

The agency solicited opinions from Ohio's petroleum underground storage tank owners and operators through a questionnaire. Over 1,000 responses were received and more than 75% of the respondents indicated a preference of decreased annual per-tank fees over a decrease in the Fund deductible amounts. Stakeholders were supportive of the proposed rule amendment.

### **9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

The Board's Finance Committee reviewed Pro-Forma Operating Statements prepared using current year budgets, estimates of future revenues and expenses based on historical prior revenues and expenses of the Financial Assurance Fund (Fund), and an estimate of the unpaid reimbursement liability of the Fund prepared annually using actuarial methodology.

Based upon this review, the Finance Committee's recommendation to the Board was to amend rule 3737-1-04 to reduce the annual fees in the amount of \$100 per tank.

### **10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

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The Board's Finance Committee considered making no change to the annual per-tank fee.

**11. Did the Agency specifically consider a performance-based regulation? Please explain.**

*Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

Not Applicable. The rule does not affect regulation of underground storage tank systems.

**12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

The Petroleum UST Release Compensation Board is the only State agency that exists to provide Ohio's petroleum underground storage tank owners with \$1 million of financial responsibility to pay for potential damages caused by releases from their underground storage tank systems.

**13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

The Board's staff will be advised of the change to the annual Financial Assurance Fund fee resulting from the amended rule and the Board's Statistical Tank and Reimbursement Records System database software will be updated to ensure the fee change is uniformly applied to all owners of petroleum underground storage tanks.

**Adverse Impact to Business**

**14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

**a. Identify the scope of the impacted business community;**

Ohio's petroleum underground tank owners and operators will be impacted by the proposed amended rule.

**b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**

For the purposes of this analysis, the nature of the adverse impact is the annual fee, however, in this case, the annual per-tank fee is being reduced from \$600 to \$500.

**c. Quantify the expected adverse impact from the regulation.**

*The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.*

The amendment will save Ohio's underground storage tank community approximately \$2 million each year.

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**15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

The annual Financial Assurance Fund fees are necessary in order to maintain the financial soundness of the Fund and assist Ohio's petroleum underground storage tank owners and operators with taking necessary corrective action and compensating third parties for bodily and property damage caused by accidental releases of petroleum.

The amount of the annual fee is recommended by the Board's Finance Committee based on a careful analysis of current year budgets, estimates of future revenues and expenses of the Financial Assurance Fund (Fund), and the estimate of the Fund's unpaid reimbursement liability.

**Regulatory Flexibility**

**16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

Because the U.S. EPA financial responsibility requirements apply to all owners and operators of petroleum underground storage tank systems, participation in the Fund is mandatory, and there is no provision in section 3737.91 of the Ohio Revised Code that provides an exemption for payment of the annual Financial Assurance Fund fee.

**17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

The proposed change to the rule does not assess administrative fines or civil penalties for the failure to timely file paperwork.

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. Fee statement notices are mailed to owners and operators by May 1 of each year and payment is due by July 1. 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 \$1000/tank.

**18. What resources are available to assist small businesses with compliance of the regulation?**

The Board's staff is available to answer any questions concerning the payment of the annual Financial Assurance Fund fees. Information, including a Common Questions page, is available on the Board's website at [www.petroboard.org](http://www.petroboard.org).

**Jonathan Maneval**

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**From:** Jonathan Maneval  
**Sent:** Tuesday, October 01, 2013 12:27 PM  
**To:** Jonathan Maneval  
**Subject:** Petroleum Board - Finance Committee Meeting

## MEETING NOTICE

**There will be a Petroleum UST Release Compensation Board Finance Committee meeting on Friday, November 8, 2013 beginning at 10:00 a.m. in the conference room in the Board's office located at:**

**LeVeque Tower  
50 West Broad Street – Suite 1500  
Columbus, Ohio 43215**

The committee will discuss short and long term financial projections for the Fund. The result of these discussions may cause the committee to draft changes to the following rules:

**3737-1-04: Annual petroleum underground storage tank financial assurance fee, certification of compliance and financial responsibility.**

**3737-1-06: The deductible and the reduced deductible.**

In accordance with the requirements of Executive Order 2011-01K and Chapter 107 of the Ohio Revised Code, all interested parties are invited to attend, and all parties in attendance at that time will have the opportunity to provide comment.

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**Jonathan Maneval**  
Administrative Coordinator  
Petroleum UST Release Compensation Board  
The LeVeque Tower  
50 W. Broad Street, Suite 1500  
Columbus, OH 43215  
Phone: 614-752-8963  
1-800-224-4659 (Ohio only)  
Fax: 614-752-8397  
[www.petroboard.org](http://www.petroboard.org)

This message and any response to it may constitute a public record and thus may be publicly available to anyone who requests it.



# BOARD EMAIL NOTICE LIST

Exhibit A

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.	bmittchell@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@hymiller.com
Scott Earhart	Earhart Petroleum Inc.	searhart@earhartpetroleum.com
Tracy A. Sullivan	Englefield Oil Co.	tsullivan@englefieldoil.com
Karen S. Reese	FirstEnergy Corp.	reesek@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 Scheponek	GetGo	mike.scheponek@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
Nichole 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

Exhibit A

Contact	Dept/Company	Email
Lora Miller	Ohio Council of Retail Merchants	info@ohioretailmerchants.com
Glenn Sprowls	Ohio County Engineer's Association	gsprows@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.	mbbyrne@sunocoinc.com
Patti Booker	SW Ohio Garage/Gas Dealer's Association	director@soggda.com
Sonja Ison	Swift Oil Co., Inc.	eca@swiftyoil.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