

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: November 24, 2014

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☐ Rescinded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 Compensation Board proposes to amend Ohio Administrative Code rule 3737-1-04 to reduce this annual fee from \$500 per tank to \$400 per tank. There are also some minor editorial changes proposed.

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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.

Section 3737.90 of the Revised Code authorizes the Petroleum Underground Storage Tank Release Compensation Board to adopt, amend and rescind rules.

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 Petroleum Underground Storage Tank Release Compensation Board and the Financial Assurance 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 injury 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 serves three vitally important public functions. First, the Fund provides an affordable mechanism necessary to fulfill the federal regulation that requires all petroleum underground storage tank owners and operators to demonstrate financial responsibility of \$1 million for corrective action costs and compensation to be paid to a third party for bodily injury or property damage resulting from an accidental release of petroleum from their underground storage tank systems. Second, it protects Ohio's businesses and individuals from financial insolvency by reimbursing responsible persons for the costs incurred to investigate and remediate any releases as well as to compensate affected third-parties. Lastly, it serves to protect the welfare of the general public through the protection of Ohio's land and water resources, thereby reducing health risks associated with petroleum releases.

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

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compensate Ohio's petroleum underground storage tank owners and operators for taking necessary corrective action and compensating third parties for bodily injury and property damage caused by accidental releases of petroleum.

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 16, 2014, agency stakeholders were notified by email that the Petroleum Underground Storage Tank 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 Attachment 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 12, 2014, 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 Tom Stephenson representing petroleum marketers met between 9:00 a.m. and 10:00 a.m. In addition, the following stakeholders attended: Bill Hills, representing the Ohio Department of Commerce, State Fire Marshal, Bureau of Underground Storage Tank Regulations (BUSTR); and Don Bryant, Jr. representing the Hylant Group, Inc.

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

In 2012, 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 Financial Assurance 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.

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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?

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 Ohioregulation?

The Petroleum Underground Storage Tank 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 storage 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 \$500 to \$400.

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

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“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.

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

The annual Financial Assurance Fund (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 injury 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 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 Financial Assurance Fund (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 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 storage tanks underground 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 \$1,000/tank.

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

The Board's staff is available during customer service hours to answer questions tank owners and operators may have concerning the Board's rules. In addition, information is published on the Board's website and presented in its biannual newsletter.

Contact Information:

Petroleum Underground Storage Tank Release Compensation Board

Phone: (614) 752-8963

Ohio Toll Free Phone: (800) 224-4659

Fax: (614) 752-8397

Website: www.petroboard.org

Email: info@petroboard.org

From: Petroleum UST Release Compensation Board (info@petroboard.com)
Sent: Thursday, October 16, 2014 8:55 AM
To: Petroleum UST Release Compensation Board (info@petroboard.com)
Subject: Petroleum UST Release Compensation Board Meeting Notice

MEETING NOTICE

Finance Committee Meeting

There will be a Finance Committee meeting on Wednesday, November 12, 2014 at 9:00 a.m. in the conference room in the Board's office. The committee will discuss the Fund's five-year financial projections and the annual per-tank fee and deductible amounts for the 2015 program year. 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.

Board Meeting

The next Petroleum UST Release Compensation Board meeting will be held on Wednesday, November 12, 2014 at 10:00 a.m.

All meetings will be held in the conference room in the Board's office:

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

BOARD EMAIL NOTICE LIST

Contact	Dept/Company	Email
Robert and Linda Cantrell	1st Stop, Inc.	cindy@1ststopinc.com
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
Cindy Capell	ARCADIS	Dan.bremer@arcadis-us.com
Dan Bremer	ARCADIS	cindy.capell@arcadis-us.com
Thomas Hite	ARCADIS	thomas.hite@arcadis-us.com
Andy Roe	Arlington/Roe & Co.	aroe@arlingtonroe.com
Tim Bowers	Associated Insurance Agencies, Inc.	tbowers@associated-ins.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
David Dean	Buckeye Oil Equipment Co.	ddean@buckeyeoil.com
Hollie Hendricks	Bureau of Testing and Registration, Ohio Dept. of Commerce	hollie.hendricks@com.state.oh.us
Timothy N. McCann	Bureau Veritas	tim.mccann@us.bureauveritas.com
Bob Engle	Campbell Oil Company	bengel@campbeloil.com
Adrian Lozier	Cardno ATC	adrian.lozier@cardno.com
Scott McCready	Cardno ATC	scott.mccready@cardno.com
Susan Sprouse	Cardno ATC	susan.sprouse@cardno.com
Art Schmitz	Certified Oil Company	aschmitz@certifiedoil.com]
Alan Cubberley	Circle K	acubberley@circlek.com
Bill Morgan	Collins Equipment Corp.	bmorgan@collinsequip.com
Brad Cole	County Commissioners Association	bcole@ccao.org
Brian Mead	County Commissioners Association of Ohio	bmead@ccao.org
Cheryl Subler	County Commissioners Association of Ohio	csubler@ccao.org
Amy Armstrong	Creek Run L.L.C. Environmental Engineering	aarmstrong@creekrun.com
Melissa Witherspoon	Delta Environmental Consultants, Inc.	mwitherspoon@wattersonenviro.com
Mike Stipp	District Petroleum	mikes@hymiler.com
Scott Earhart	Earhart Petroleum Inc.	searhart@earhartpetroleum.com
Thomas P. Sabol	Eastridge Environmental Solutions, LLC	TSabol@yahoo.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
Bethannm Blackburn	GES, Inc.	BBlackburn@gesonline.com
Bill Barth	GES, Inc.	BBarth@gesonline.com
Steve Betts	GES, Inc.	sbetts@gesonline.com

BOARD EMAIL NOTICE LIST

Contact	Dept/Company	Email
Mike Scheponik	GetGo	mike.scheponik@giant eagle.com
Chris Zimmerman	Gilligan Oil Co.	czimmerman@gilliganoil.com
Lou Vitantonio	Greater Cleveland Automotive Dealers Association	gcada@gcada.org
Kevin Miller	Hartley Co.	kmiller@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
Ashley Collier	Kroger Company	Ashley.Collier@Kroger.com
Dave Miller	Kroger Company	Dave.Miller@kroger.com
Tom Berger	Lykins Oil Co.	tom.berger@lykinscompanies.com
Aaron Besmer	Meijer Stores Limited Partnership	aaron.besmer@meijer.com
Nichole Martin	Musick's Service Station Maintenance, Inc.	nmartinmssm@hotmail.com
Lou Sukalski	New America Insurance	Newamlou@msn.com
Dennis Knott	Ney Oil Company	dennyknott@neyoil.com
Joe O'Brien	O'Brien Technical Services, Inc.	obejoe@roadrunner.com
Karl Gebhardt, Chief	ODNR Division of Soil and Water Resources	dswc@dnr.state.oh.us
Donald L. Mader	Ohio Association of Consulting Engineers	info@acecoho.org
Frances Lesser	Ohio Auditor's Association	flesser@caao.org
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
Eric Norenberg	Ohio City/County Management Association	enorenberg@cityofoberlin.com
David W. Field	Ohio Cleaner's Association	david@assnoffices.com
Angela Van Fossen	Ohio Contractor's Association	avanfossen@ohiocontractors.org
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@ourohio.org
Susan D. Lengal	Ohio Fire Chiefs' Association	info@ohiofirechiefs.com
Richard Sites	Ohio Hospital Association	oha@ohanet.org
	Ohio Manufacturer's Association	oma@ohiomfg.com
John Mahoney	Ohio Municipal League	jmahoney@omunileague.org
Christina H. Polesovsky	API Ohio	polesovskyc@api.org
Terry Fleming	API Ohio	ohio@api.org
Dale L. Koski	Ohio Power Company	dlkoski@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	larry@ohiotrucking.org
Mark Musson	Ohio Turnpike Commission	mark.musson@ohioturnpike.org
Judi Henrich	Ohio Water Environment Association	info@ohiowea.org
Robert H. Pope	Ohio Water Well Association	bpope@assnsoffice.com
Tim Bechtold	Ohio Wholesale Beer/Wine Association	info@wbwao.org

BOARD EMAIL NOTICE LIST

Contact	Dept/Company	Email
Jennifer Rhoads	OPMCA	jrhoads@opmca.org
Bill Behrendt	OPMCA	bbehrendt@opmca.org
Ed Weglarz	OPRRRA	ssdami@voyager.net
Chris O'Neil	Pangean-CMD Associates, Inc.	coneil@pangean-cmd.com
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
Ted Green	Refuel Environmental Serv. LLC	tgreen@refuel.com
Jeffrey Erb	Sanholtz McKarns, Inc.	jeff@sanholtz-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
Toby Rickabaugh	Speedway, LLC	TARickabaugh@speedway.com
Will Latt	Speedway, LLC	welatt@speedway.com
Jeff Bood	Spence Environmental	jeff@spenceenv.com
Jeff Bood	Spence Environmental Consulting, Inc.	jeff@spenceenv.com
Mark Rhinehart	SRW Environmental Services, Inc.	rhineham@srwenvironmental.com
Stacy Cox	SRW Environmental Services, Inc.	coxst@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	Swiftly Oil Co., Inc.	eca@swiftlyoil.com
Dennis Oberdove	Tank Integrity Services Inc.	obe@tankintegrity.com
Dan Batten	Tanknology	dbatten@tanknology.com
Kevin P. Reid, P. G.	Terracon Consultants	kpreid@terracon.com
Mike Cukauskas	TH Midwest Inc.	mike.cukauskas@minitmarkets.com
Dan Thompson	Thompson Petroleum	thompsonpet@frontier.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
Denny Fee	United Dairy Farmers	dfee@udfinc.com
Kristin Watt	Vorys, Sater, Seymour & Pease	KLWatt@vorys.com
Craig Smith	Water Management Association of Ohio	craig.smith@epa.state.oh.us
Kelly Bartholomew		Kbartholomew@ascendresidential.com