

# CSI - Ohio

## The Common Sense Initiative

### Business Impact Analysis

**Agency Name:** Petroleum Underground Storage Tank Release Compensation Board

**Regulation/Package Title:** OAC Chapter 3737 – Rule Amendments

**Rule Number(s):** 3737-1-03, 3737-1-04, 3737-01-04.1, 3737-1-07, 3737-1-12,  
3737-1-12.1, 3737-1-15, and 3737-1-19.

**Date:** July 13, 2018

**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☐ Rescinded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.*

Each year the Petroleum Underground Storage Tank Release Compensation Board's (Board) Rules Committee meets with industry representatives, agency stakeholders, agency staff, and the Assistant Attorney General assigned to the Board to review the Board's rules and determine whether any changes are necessary. On September 1, 2017, amendments to rules administered by the Bureau of Underground Storage Tank Regulations (BUSTR), an agency under the Ohio State Fire Marshal's authority, became effective, and as a result, the Committee reviewed the Board's rules with an emphasis on identifying rule revisions that may be needed as a result of changes to the fire marshal's rules. It was noted that the term "confirmed release" is defined in the fire marshal's rule 1301:7-9-13 and the release reporting

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requirements, which includes reporting a release, suspected release, or confirmed release, were changed effective September 1, 2017. As a result, the definition of a “confirmed release” is being added to the Board’s rule 3737-1-03. In addition, the Committee felt that it would be better to create a new term “release incident” rather than to use all three related terms – “release,” “suspected release,” and “confirmed release” – throughout the Board’s rules. The amendments are primarily being proposed to incorporate the new term “release incident” throughout the Board’s rules.

The following amendments are being proposed:

#### **Rule 3737-1-03 Definitions**

This rule provides definitions for the purposes of clarifying the meaning of terms as they appear in sections 3737.90 to 3737.98 of the Revised Code and rules 3737-1-01 to 3737-1-23 of the Administrative Code.

The Board proposes to amend the rule to add the term “confirmed release” as it is defined in the fire marshal’s rule 1301:7-9-13. The term “release incident” is also being added and means a “release,” “suspected release,” or “confirmed release,” whichever is first discovered. In general, this new term will replace the existing phrase “suspected release or release, whichever is first” throughout the Board’s rules.

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

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, certification of compliance with applicable rules for USTs 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 further requires the responsible person to provide notice to the director when installation of a UST has occurred, and when ownership of a UST has 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 proposed amendment to paragraph (G)(2) will replace “petroleum release” with “release incident.”

##### **Rule 3737-1-04.1 Coverage reinstatement.**

The rule provides the requirements for reinstating coverage with the Fund when a responsible person has not received a certificate of coverage for a UST for the prior two or more consecutive fiscal years.

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The proposed amendments to paragraphs (A)(2) and (C) are text edits to provide additional clarification and make the rule easier to read.

**Rule 3737-1-07 Establishing fund eligibility for corrective action costs.**

This rule provides the requirements for obtaining eligibility to file claims under the Fund. In addition, after a responsible person is determined to be eligible, the rule requires the responsible person to maintain eligibility by maintaining compliance with UST regulations. If the responsible person fails to maintain compliance with the UST regulations, eligibility to file claims under the Fund may be revoked.

The proposed amendments to paragraphs (A)(1), (A)(2), (A)(5)(a), and (A)(10) will replace the language “suspected release or release, whichever is first” with the new term “release incident.” Paragraph (A)(9) is being updated to include the new “confirmed release” reporting requirement of the fire marshal’s rule 1301:7-9-13.

**Rule 3737-1-12 Application for reimbursement.**

This rule provides the requirements for filing a Claim Reimbursement Application and sets the deadlines for the responsible person to submit the application.

The Board proposes to update paragraph (D) to indicate that the one-year filing period applies to corrective actions performed under rule 1301:7-9-13 that was in effect between March 1, 2005, and August 31, 2017. The missing word “program” is being added to paragraph (D)(10). The proposed new paragraph (E) is identical to paragraph (D) except that it indicates the one-year filing period applies to corrective actions performed under rule 1301:7-9-13 in effect on or after September 1, 2017, and the new term “release incident” is being used in paragraph (E)(1). Paragraphs (F)(2) and (K)(1) are being amended to properly cite the applicable paragraphs of the rule as proposed. The amendment to paragraph (K)(2) is editorial in nature with the intent of clarifying the meaning of the paragraph and making it easier to read and understand.

**Rule 3737-1-12.1 Mandatory and voluntary pre-approval of corrective action costs.**

The rule sets forth the requirements for requesting pre-approval of pending corrective action costs. Any costs submitted for reimbursement that were not pre-approved as required are subject to a 50% reduction in the reimbursable amount.

The proposed new paragraph (A)(6) requires the annual submission of an estimated cost and completion schedule for the corrective action costs associated with free product monitoring activities required by BUSTR’s 2017 Technical Guidance Manual. Paragraph (B) is being amended to cite the applicable paragraphs of the rule as proposed.

**Rule 3737-1-15 Modifying the deductible or the reduced deductible.**

The rule provides for the modification of the deductible and reduced deductible if necessary to ensure the solvency of the Fund and to meet the financial soundness objectives set forth in division (C) of section 3737.91 of the Revised Code.

The proposed amendment to paragraph (C) will replace the language “suspected release or release, whichever is first” with the new term “release incident.”

**Rule 3737-1-19 Establishing fund eligibility for third party claims.**

The rule sets forth the requirements for the filing for and determination of eligibility to file claims under the Fund for compensation paid or anticipated to be paid to a third party for the costs of bodily injury or property damage resulting from an accidental release of petroleum from an assured UST.

The Board proposes to amend paragraphs (A)(2), (A)(3), and (A)(8) to replace the language “suspected release or release, whichever is first” with the new term “release incident.” Paragraph (A)(7) is being updated to include the new “confirmed release” reporting requirement of the fire marshal’s rule 1301:7-9-13.

**Statement concerning division (E) of section 121.82 of the Revised Code.**

***Does the draft rule package require insurance and/or surety products as a condition of compliance?***

As a condition to receiving a certificate of coverage with the Fund, owners and operators of USTs must demonstrate financial responsibility for the Fund deductible or reduced deductible amount in compliance with rule 1301:7-9-05 of the Administrative Code, which is adopted and administered by the State Fire Marshal. In program year 2017, more than 3,000 of Ohio’s public and private UST owners and operators indicated on a Board-prescribed form that they maintained one or more of the ten financial responsibility mechanisms required by the State Fire Marshal’s rule. A list of known insurance providers published by the U.S. EPA (EPA 510-B-17-002) is an example of the availability of the insurance mechanism.

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

Section 3737.90 of the Revised Code authorizes the 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 chapter 3737 of the Ohio Administrative Code is not a regulation, the Board and the Fund it manages were created to satisfy federal EPA regulations requiring all U.S. petroleum UST 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 UST systems [40 C.F.R. 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.

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**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 Fund serves three vitally important public functions. First, the Fund provides an affordable mechanism necessary to fulfill the federal regulation that requires all petroleum UST 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 UST 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.

Since the Fund was established by the Ohio General Assembly in 1989, the Fund has proven to be a viable financial assurance mechanism for Ohio's petroleum tank owners. To date, more than \$253 million has been reimbursed to Ohio's tank owners and operators to clean up more than 3,131 petroleum contaminated sites.

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

Success of these rules will be measured by the overall effectiveness and efficiency of the agency's mission of providing financial assistance to remediate contamination caused by releases from assured petroleum USTs.

**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.*

The Board's Rules Committee holds open meetings throughout the year. The Committee consists of Board Chair, James Rocco, representing petroleum refiners; Vice-Chair John Hull, representing engineers with geology experience and not associated with the petroleum industry; Mayor Ronald Falconi, representing local government; Scott Fleming, representing businesses that own petroleum USTs; and Chris Geyer, representing the Ohio EPA. The committee met on January 10, 2018; February 14, 2018; and March 21, 2018.

Agency stakeholders were notified of the Rules Committee meetings by email on December 12, 2017; January 12, 2018; and February 21, 2018. A list of the Board's stakeholders that were contacted is attached as Exhibit A. Meeting notices were also published on the Board's website, posted at the Board's office, and sent to Gongwer News Service.

The following stakeholders were in attendance at one or more of the Rules Committee meetings: Jeralynne Offenberger, representing Par Mar Oil Co.; Mark Addington, representing Kroger Company; Samantha Kramer, representing Speedway, LLC; and Dan Adams and Doug Darrah,

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representing ATC Group Services LLC. The following Board staff were also in attendance at one or more of the meetings: Starr Richmond, Executive Director; Madeline Esquivel, Assistant Director; Cindy Duann; Jonathan Maneval; and Hannah Brame. The Board's Assistant Attorney General, Jennifer Croskey, attended the January 10, 2018, and February 14, 2018 meetings; and Assistant Attorney General Leigh Bayer attended the March 21, 2018 meeting.

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

The Board's Rules Committee, agency stakeholders, agency staff, and Assistant Attorney Generals assigned to the Board met to review each of the Board's rules with an emphasis on identifying rule revisions that may be needed as a result of the State Fire Marshal's rule changes that became effective on September 1, 2017. After discussing the Board's rules, it was apparent that since the fire marshal changed its release reporting requirements, which includes the reporting of a release, suspected release, or confirmed release, the term "confirmed release" needed to be included in the Board's definition rule, and the consensus was that defining the new term "release incident" would benefit Ohio's tank owners and operators by making the rules easier to read and understand.

**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?**

Not applicable.

**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?**

Not applicable.

**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.

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

The Board is the only State of Ohio agency that exists to provide Ohio's petroleum UST owners with \$1 million of financial responsibility to pay for damages caused by releases from their UST 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 notifies Ohio's petroleum UST owners and operators, and agency stakeholders of its rule filings through a newsletter and its website. In addition, agency correspondence is written to clearly explain the requirements of the Board's rules to the reader. Constituents are encouraged to contact

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the Board's office to discuss any questions or concerns regarding the Board's rules with trained agency personnel.

#### **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;**
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
- 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 rules adopted by the Board apply to all of Ohio's past and present petroleum tank owners and operators. Currently, there are approximately 2,700 private owners of 18,700 USTs; an additional 1,500 tanks are owned and operated by public entities.

Because these rules are being amended and not subject to a five-year review, the focus will be on the impact of the amendments only.

#### **Rule 3737-1-03**

This rule provides definitions for the purposes of clarifying the meaning of terms and has no adverse impact on businesses.

#### **Rule 3737-1-04**

- a.** Rule 3737-1-04 impacts all of Ohio's petroleum tank owners and operators.
- b.** Rule 3737-1-04 requires both an expenditure and the reporting of information as a condition of compliance. 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. Where ownership of a UST system is transferred, the new responsible person is 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.
- c.** The annual per-tank fee is currently \$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. The annual application for a certificate of coverage required by this rule, including the certification of compliance with the fire marshal's rules and the statement of financial responsibility for the deductible amount of coverage with the Fund, is typically three pages and

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requires minimal time to complete. It is not necessary to hire an accountant, consultant, or other professional to complete the application. A tank owner that wishes to appeal a determination or an order issued by the director may file an objection via email, fax, or mail. An attorney is not necessary for the filing of an objection. The additional notifications required by the rule, including the notification of tank installation or transfer, may similarly be provided via email, fax, or mail. As a convenience, single-page notification forms are available on the Board's website.

The proposed amendments to rule 3737-1-04 will not change the adverse impact to the tank owners and operators.

#### **Rule 3737-1-04.1**

- a. Rule 3737-1-04.1 only impacts tank owners and operators who have not obtained a certificate of coverage for a given UST for two or more consecutive fiscal years.
- b. In order to comply with rule 3737-1-04.1, any responsible person subject to the rule is required to submit an affidavit certifying that no release has been suspected or confirmed from the petroleum UST system for which coverage is being sought, or that any known release is in compliance with the corrective action requirements of rule 1301:7-9-13. The tank owner must also provide documentation demonstrating compliance with the fire marshal's rules for the operation and maintenance of petroleum USTs. Such documentation may include, but is not limited to, copies of release detection records, results of tank and line tightness tests, and if applicable, results of corrosion protection tests, and out-of-service permits.
- c. If a responsible person is subject to the requirements of rule 3737-1-04.1, a single-page affidavit is required to be signed and notarized in order to comply with the certification requirement of the rule. If the responsible person is operating the tank system in compliance with the fire marshal's rules, the records required to comply with the rule should be readily available to the responsible person and can be faxed, emailed, or mailed to the Board. Owners who are not in compliance with the fire marshal's rules may need to work with the fire marshal's office to bring the tank system into compliance before the documentation necessary to comply with the rule can be provided.

The proposed amendments to rule 3737-1-04.1 will not change the adverse impact to the tank owners and operators.

#### **Rule 3737-1-07**

- a. Rule 3737-1-07 impacts only responsible persons who are seeking reimbursement for corrective action costs from the Fund.
- b. The rule requires information to be provided to the Board in order to comply with the rule.
- c. The Application for Financial Assurance Fund Eligibility required by the rule is a four-page application that can be completed by the responsible person or at the responsible person's option, an environmental consultant. In addition, a report describing the petroleum release (closure report, site assessment report, immediate corrective actions report, etc.) must be

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submitted with the application. Because these reports are required by the fire marshal's closure assessment or corrective action rules, the only additional expenditures to the applicant are duplicating and mailing costs.

The proposed amendments to rule 3737-1-07 will not change the adverse impact to the tank owners and operators.

#### **Rules 3737-1-12 and 3737-1-12.1**

- a. Rules 3737-1-12 and 3737-1-12.1 only impact responsible persons seeking monies from the Fund for the reimbursement of cleanup costs or compensation paid for third party bodily injury and property damage.
- b. Rule 3737-1-12 requires administrative time and costs for copying and printing in order to provide the information required in the Claim Reimbursement Application. A responsible person that chooses to hire a consultant to complete and submit the application on its behalf will incur an expenditure for the consultant's services. In almost all instances, rule 3737-1-12.1 will require the responsible person to pay a consultant to estimate and prepare an explanation of the costs for pending corrective action activities. These costs, however, are reimbursable when claimed under the Fund. Any costs submitted for reimbursement that were not pre-approved as required are subject to a 50% reduction in the reimbursable amount.
- c. The Claim Reimbursement Application required by rule 3737-1-12 contains seven sections and is 14 pages in length, including six pages of instructions and completion checklists. Along with the application, the applicant must submit invoices; proof of payment documentation; reports and other documentation supporting the costs claimed; and copies of relevant correspondence with the fire marshal. The time necessary to complete the application and compile the information necessary for submission is variable dependent on the number of invoices and the scope of the work for which costs are being claimed. A responsible person submitting a claim for one invoice with charges for basic corrective action activities, such as groundwater sampling, will likely spend far less time preparing and submitting the application than a responsible person submitting a claim for remedial action activities that occur over a period of time. Often the preparation and submittal of the Claim Reimbursement Application is performed by the responsible person's consultant as a courtesy to the responsible person. In the event this is not the case, the cost for this service will depend largely upon the number of hours required to compile the supporting documentation, which can be extensive if the corrective actions for which costs are being claimed are complex. Therefore, it is estimated that the costs to complete the claim application range between \$100 and \$1,500. A request for the pre-approval of costs as required by rule 3737-1-12.1 is made by submitting a one page Cost Pre-Approval Application, itemized listing of the estimated costs, and if appropriate, a copy of the proposed plan required by the fire marshal for the corrective action activities. The preparation and submission of a request for the pre-approval of costs is routinely completed by the responsible person's environmental consultant. These costs are reimbursable when claimed under the Fund and range from \$100 to \$2,500.

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#### **Rule 3737-1-15**

- a. Rule 3737-1-15 impacts all of Ohio's tank owners and operators.
- b. The rule provides the Board with the ability to modify the standard deductible and reduced deductible amounts set forth in rule 3737-1-06. This rule arguably could adversely affect a business if the Board determines an increase to the deductible amounts is necessary to meet the financial soundness objectives set forth in section 3737.91 of the Revised Code.
- c. An increase in the deductible and reduced deductible amounts could result in an increase in expenditures for the responsible person if a petroleum release is discovered after the deductible amounts are increased and the corrective action costs exceed the deductible. If the deductible amounts are reduced however, the corrective action costs the responsible person must incur before Fund reimbursement is available would decrease.

The proposed amendments to rule 3737-1-15 will not change the adverse impact to the tank owners and operators.

#### **Rule 3737-1-19**

- a. Rule 3737-1-19 only impacts a responsible person when a third party files an action against the responsible person to recover costs related to bodily injury or property damage suffered as a result of a petroleum release from an assured UST.
- b. The rule requires the responsible person to submit a Third-Party Claim Eligibility Application in order to receive a determination of eligibility to file claims under the Fund for costs associated with bodily injury or property damages a third-party experiences as a result of an accidental release of petroleum from the responsible person's USTs. The application must be submitted to the Board within 30 days from the date a responsible person receives any of the following: service of a third-party complaint against the responsible person; receipt of a third-party demand for settlement; or notice of representation of a third party in a lawsuit against the responsible person. It requires administrative time and minimal costs in order to provide the information required in the application.
- c. The Third-Party Claim Eligibility Application required by the rule is five pages in length and can be completed by the responsible person or at the responsible person's option, an environmental consultant or attorney. In addition, a copy of the complaint, demand and / or notice of representation as well as any other available documents supporting the third-party's claim must be provided with the application.

The proposed amendments to rule 3737-1-19 will not change the adverse impact to the tank owners and operators.

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

The Rules Committee members, industry representatives, constituent stakeholders, and agency staff recognize that these rules could potentially adversely impact the business community, specifically Ohio's

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tank owners and operators. However, the rules are necessary to implement sections 3737.90, 3737.91 and 3737.92 of the Revised Code, and they are essential tools that ensure the long-term financial health and continued success of the Fund. Any potential adverse impacts that result from these rules are offset by the benefit to Ohio's tank owner community as a whole.

No significant changes are being proposed to the rules in this rule package, and the Board does not estimate an increased cost to the business community to comply with the rules if they are adopted.

#### **Rule 3737-1-04**

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 also 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 petroleum UST system. The required application for a certificate of coverage, along with the notification requirements of the rule, are necessary to implement the program.

#### **Rule 3737-1-04.1**

Where a certificate of coverage has not been issued for a given petroleum UST for two or more consecutive prior fiscal years, rule 3737-1-04.1 requires the responsible person to submit documentation demonstrating compliance with the fire marshal's rules for the operation and maintenance of the subject UST before a certificate may be issued. This rule provides a responsible person with notice of non-assurability with the Fund before the responsible person experiences a release and upon application for eligibility pursuant to rule 3737-1-07, is denied eligibility to claim under the Fund. By verifying the responsible persons compliance with the fire marshal's rules prior to the discovery of a release, the responsible person is provided with advance notice and afforded the opportunity to correct any issues of non-compliance. The rule has been very successful in assisting Ohio's owners and operators with becoming compliant with the rules governing the operation of their USTs and in ensuring the responsible person is in compliance with those rules at the time a release is discovered.

#### **Rule 3737-1-07**

Rule 3737-1-07 requires a responsible person to file an eligibility application in order to receive a determination of eligibility to file claims under the Fund for corrective action costs resulting from an accidental release of petroleum. This rule serves to ensure that only an eligible responsible person

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may seek reimbursement and receive monies from the Fund. The rule requires the director of the Fund to verify that at the time the release was first suspected or confirmed, a responsible person possessed a valid certificate of coverage for the tank from which the release occurred, the subject tank was being operated and maintained in compliance with the fire marshal's rules, and the release was timely reported as required by the fire marshal's rules.

#### **Rule 3737-1-12**

To receive reimbursement from the Fund for corrective action costs, rule 3737-1-12 requires a responsible person to file a Claim Reimbursement Application and to document in both technical and financial terms the costs for which reimbursement is being sought. The rule helps to ensure that only those actual costs that are reasonable and necessary for corrective action are reimbursed by the Fund. Importantly, the rule also sets forth deadlines for the responsible person to file claim applications for the reimbursement of corrective action costs. In general, costs must be claimed for reimbursement within one year of the date the work was required to be completed by the fire marshal. These deadlines are necessary to enable the Board to budget and forecast the long-term liability of the Fund as well as to annually determine the amount of the per-tank fee. The claim filing deadlines indirectly benefit Ohio's tank owners by helping to ensure reports and other documentation required to process the request for reimbursement are readily available.

#### **Rule 3737-1-12.1**

Rule 3737-1-12.1 requires responsible persons to obtain pre-approval of estimated costs before conducting certain corrective action activities. These activities include interim response actions requiring the fire marshal's approval; remedial action plans; free product monitoring plans; free product recovery activities if recovery continues beyond one year; and if the estimated cost exceeds \$6,000, tier 3 evaluation plans, monitoring plans, and plans to calibrate or disprove the fate and transport model. The Board adopted rule 3737-1-12.1 for two reasons. The first being that the rule provides assurance to responsible persons that the costs of the pending corrective action work will be reimbursed once incurred and claimed and secondly, the rule serves to assist the Board with controlling costs to the Fund and, thereby, helps to keep tank fees affordable.

#### **Rule 3737-1-15**

Increasing or decreasing the deductible amount of coverage with the Fund is one mechanism available to the Board to ensure the continued financial solvency of the Fund as well as ensuring that the annual per-tank fee remains affordable to Ohio's petroleum UST owners and operators. The deductibles encourage tank owners and operators to operate and maintain their underground storage tanks and related equipment in a manner that reduces the likelihood of a release. Further, when a release does occur, it is to the responsible person's benefit to stay involved in and oversee the corrective action activities in order to control the costs to both the responsible person and the Fund.

## **Rule 3737-1-19**

Rule 3737-1-19 requires the responsible person to file a Third-Party Claim Eligibility application in order to receive a determination of eligibility to file claims under the Fund for compensation to be paid to a third-party for bodily injury or property damage resulting from an accidental release of petroleum. The rule ensures that only an eligible responsible person is able to file for and receive monies from the Fund. The rule requires the director of the Fund to verify that at the time the release was first suspected or confirmed, a responsible person possessed a valid certificate of coverage for the tank from which the release occurred, the subject tank was being operated and maintained in compliance with the fire marshal's rules, and the release was timely reported as required by the fire marshal's rules.

### **Regulatory Flexibility**

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

In Ohio, as in many other states, the only mechanism available to petroleum UST owners and operators to demonstrate \$1 million of financial responsibility for taking corrective actions and compensating third parties as required by both federal and state law is the Fund.

**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?**

There are no administrative fines or civil penalties associated with these rules.

**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 newsletter.

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