

**MEMORANDUM**

TO: Jonathan Maneval, Petroleum Underground Storage Tank Release Compensation Board

FROM: Sean T. McCullough, Regulatory Policy Advocate

DATE: July 30, 2014

RE: **CSI Review – 3737 Five-Year Review No-Change/Amended Rules (OAC §§ 3737-1-01; 3737-1-02; 3737-1-03; 3737-1-04; 3737-1-04.1; 3737-01-04.2; 3737-1-05; 3737-1-06; 3737-1-07; 3737-1-08; 3737-1-09; 3737-1-09.1; 3737-1-10; 3737-1-11; 3737-1-12; 3737-1-12.1; 3737-1-13; 3737-1-15; 3737-1-16; 3737-1-17; 3737-1-18; 3737-1-19; 3737-1-20; 3737-1-21; 3737-1-22; and 3737-1-23.)**

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (R.C.) § 107.54, CSI has reviewed the abovementioned administrative rules and associated Business Impact Analysis (BIA). This memo represents CSI's comments to the Agency as provided for in R.C. § 107.54.

I. INTRODUCTION AND BACKGROUND

On July 2, 2014, the Petroleum Underground Storage Tank Release Compensation Board (PUSTR) submitted two rule packages containing a total of twenty-six (26) rules, which specifically consist of two (2) new rules, fifteen (15) amended rules¹ and nine (9) no-change rules. PUSTR has submitted these rules as a result of the five-year review requirement contained in R.C. § 119.032. The rules provide a regulatory structure for PUSTR and the administration of the Petroleum Underground Storage Tank Financial Assurance Fund (the Fund). PUSTR cites R.C. § 3737.90 as authority to establish these rules. The official comment period ended June 13,

¹ OAC §§ 3737-1-04 and 3737-1-22 both contain amendments consisting of more than 50 percent of the rule language. Therefore, the Legislative Service Commission requires that the existing rules be rescinded and replaced by new rules that have the same rule numbers.

2014. No stakeholder comments were submitted during the CSI review period.

II. ANALYSIS

A. ADVERSE IMPACT ON BUSINESS

The scope of the impacted business community is comprised of all of Ohio's past and present petroleum underground storage tank (Tank) owners and operators. According to PUSTR, in Ohio "there are approximately 2,800 private owners of 19,000 underground storage tanks."

According to PUSTR in the BIA, the rules require a varying array of compliance standards, depending on the circumstances of the storage tank owner. The rules require that every owner or operator obtain financial assurance coverage from PUSTR by paying an applicable fee per Tank annually, and a certification by the owner that his/her Tank is in compliance with applicable state law. The initial fee is set by statute at \$500. The rules provide authority for PUSTR to conduct audits of owners and operators to ensure compliance with the rules. The rules require notification of PUSTR by any owner or operator concerning the installation of a new Tank or transfer of ownership of a Tank. A transfer fee is also required when a Tank transfers ownership. The amount of a transfer fee is \$500 per Tank. The rules also create a requirement that, at the time that a Tank is transferred ownership and outstanding fees for that Tank exist, the new owner may choose to either pay all outstanding fees on the Tank, or conduct a baseline environmental site assessment to establish the chemical concentration in the soil and groundwater. Such an assessment requires physical site assessment, laboratory analysis of ground samples, and the reporting of certain identification and mapping information. The cost of compliance with the baseline environmental site assessment requirement, depending on the circumstances, can range from \$500 to \$10,000. The rules also require the owner or operator to provide (1) notice to PUSTR of any third parties against whom that owner or operator may have a right of recovery for any petroleum release caused by actions of that third party, and (2) notice to the third party of PUSTR's right of subrogation. The rules also include punitive provisions for non-compliance with these rules, including the possibility of additional fees (e.g. a late fee of \$1,000) and revocation of Fund financial assurance coverage.

The above provisions impose on an owner or operator of Tanks the expenditure of specific costs and requirements to report information to ensure compliance with these rules. The rules also provide punitive measures as a result of non-compliance. Such requirements are enumerated in R.C. § 107.52, and therefore, are considered adverse impacts to business.

B. JUSTIFICATION FOR ADVERSE IMPACT

According to PUSTR, the Board reached out to over seventy (70) interested stakeholders for feedback on the proposed rules in early 2014, and most of the significant amendments and new rule language included in the proposed rules are a direct result of comments and feedback given by stakeholders. PUSTR argues that the rules are necessary to implement applicable sections of statute and other OAC sections. Further, PUSTR argues that the above listed impacts are necessary to “ensure the long-term financial health and continued success of the Fund.”

CSI is satisfied with PUSTR’s justification because (1) PUSTR reached out to stakeholders from an early stage of rule review and included those stakeholders in the drafting process, (2) PUSTR incorporated comments and suggestions made by stakeholders into the proposed rules, (3) no stakeholder concerns have been expressed to CSI, and (4) PUSTR has provided sufficient substantive reasoning as to why these proposed rules are necessary; specifically, that PUSTR is compelled to create these rules pursuant to statute, and they are necessary to ensure the long-term stability of the Fund and ensure proper recovery and compensation is available to claimants subject to harm caused by underground petroleum tank releases. Accordingly, the adverse impacts of these rules have been sufficiently justified by PUSTR.

III. RECOMMENDATIONS

After reviewing the BIA, and pursuant to the more detailed reasons outlined above, CSI has no specific recommendations regarding the rule packages.

IV. CONCLUSION

Based on the above analysis and recommendations, CSI concludes that PUSTR should proceed with the formal filing of these rule packages with the Joint Committee on Agency Rule Review.

cc: Mark Hamlin, Lt. Governor’s Office