

**MEMORANDUM**

**TO:** Jonathan Maneval, Executive Assistant – Petroleum Underground Storage Tank Release Compensation Board

**FROM:** Todd Colquitt, Director of Business Advocacy – CSI

**DATE:** August 6, 2018

**RE:** **CSI Review – Petroleum Underground Storage Tank Release Compensation Board – Textual Rule Amendments (OAC 3737-1)**

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

**Analysis**

This rule package consisting of eight amended rules is being proposed by the Petroleum Underground Storage Tank Release Compensation Board (Board) for review. This review is not being undertaken as part of the statutory five-year rule review requirement. The rule package was submitted to the CSI Office on July 13, 2018, with a public comment period end date of July 27, 2018. No comments were received during the public comment period.

The eight rules are part of Ohio Administrative Code (O.A.C.) Chapter 3737-1 which consists of twenty-three rules and sets out the procedures governing the Board and its programs. On September 1, 2017, amendments to rules administered by the Bureau of Underground Storage Tank Regulations (BUSTR) – a separate agency overseen by the Ohio State Fire Marshal – took effect. The Board's Rules Committee subsequently met with industry representatives and agency stakeholders to review together the changes made by BUSTR to determine whether any of the

Board's rules would need to be amended. As a result of the addition of the term "confirmed release" within BUSTR's rule for corrective actions (O.A.C. 1301:7-9-13), the Rules Committee and stakeholders determined that the Board's own rules needed to be updated correspondingly. Additionally, it was determined that the creation and use of the new umbrella term "release incident," where textually appropriate, would be less cumbersome than repeatedly reiterating the three separate terms "release", "suspected release", and "confirmed release" and would improve ease of reading. Consequently, the vast bulk of the proposed amendments are textual in nature in that the rule language is amended throughout to adopt the BUSTR definition of "confirmed release" and the Board definition of the umbrella term "release incident."

Additionally, new language is being added that would require the annual submittal of an estimated cost and completion schedule for corrective action items associated with petroleum product monitoring activities required by BUSTR. The BUSTR rule changes and updates to its accompanying Technical Guidance Manual which took effect in 2017 require the submittal of a "free product monitoring plan" as part of the activities required by BUSTR in a Tier 2 Evaluation Report until the free product, i.e., leaked petroleum product, has been recovered to the maximum extent practicable. Similar to what it requires in the existing rules for other corrective action activities required by BUSTR, the Board's proposed amendment would require that estimated free product monitoring costs associated with a Tier 2 Evaluation Report be submitted for preapproval with annual updates to facilitate cost control. Additionally, preapproval of estimated costs provides the responsible person a degree of assurance regarding the amount that will be reimbursed before costs are actually incurred.

The purpose of a CSI recommendation memo is not to catalogue in detail each rule in all its subparts, but rather to weigh the rule package on the whole in whether stakeholders were included and their input considered, whether the appropriate balance has been struck, and whether the agency has adequately articulated the necessity for the adverse business impact. After reviewing the proposed rules and original BIA, the CSI Office has determined that the rule package as a whole satisfactorily meets the standards espoused by the CSI Office and the purpose of the rule package justifies the adverse impacts identified in the BIA.

### **Recommendations**

For the reasons described above, the CSI Office has no recommendations regarding this rule package.

### **Conclusion**

Based on the above comments, the CSI Office concludes that the Petroleum Underground Storage Tank Release Compensation Board should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Emily Kaylor, Director of Regulatory Policy – CSI