



Common Sense Initiative

Mike DeWine, *Governor*
Jon Husted, *Lt. Governor*

Joseph Baker, *Director*

MEMORANDUM

TO: Jonathan Maneval, PUSTR Board

FROM: Jacob Ritzenthaler, Business Advocate

DATE: August 6, 2024

RE: CSI Review – Chapter 3737 Five Year Review (OAC 3737-1-04, 3737-1-04.1, 3737-1-05, 3737-1-06, 3737-1-07, 3737-1-09, 3737-1-10, 3737-1-11, 3737-1-12, 3737-1-12.1, 3737-1-13, 3737-1-15, 3737-1-16, 3737-1-19, 3737-1-20, and 3737-1-22)

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) 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 Board as provided for in ORC 107.54.

Analysis

This rule package consists of five amended rules and eleven no-change rules proposed by the Ohio Petroleum Underground Storage Tank Release Compensation Board (Board) as part of the statutory five-year review requirement. This rule package was submitted to the CSI Office on July 5, 2024, and the public comment period was held open through July 15, 2024. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on July 5, 2024.

Ohio Administrative Code (OAC) Chapter 3737-1 establishes requirements for the Board and licensees. OAC 3737-1-04 and 3737-1-04.1 set forth requirements for annual Financial Assurance Fund (Fund) fees and certificates of compliance, as well as certificate reinstatement. The rules are proposed without changes. OAC 3737-1-05 establishes the procedure for the assessment of a supplemental financial assurance fee and is proposed without changes. OAC 3737-1-06 sets the deductible and the reduced deductible available for owners and operators of six or fewer tanks. The rule is amended to provide clarifying language edits. OAC 3737-1-07 sets forth the criteria for establishing Fund eligibility and is amended to state that applications must be received within one

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year of the date of the release incident. OAC 3737-1-09 describes the limitations of Fund coverage and is amended to prohibit reimbursement for lump-sum charges for markup costs. OAC 3737-1-10 and 3737-1-11 set forth requirements for financial and technical audits and are proposed without changes. OAC 3737-1-12 sets forth requirements for applying for reimbursement and is proposed without changes. OAC 3737-1-12.1 concerns mandatory and voluntary pre-approval of corrective action plans and is amended to state that written evaluations shall be submitted on a yearly basis for each year that ongoing free product recovery is required by the fire marshal. OAC 3737-1-13 establishes requirements for the view of reimbursement applications and requests for additional information for review. The rule is proposed without changes. OAC 3737-1-15 allows the Board to modify the deductible to maintain solvency of the Fund and is proposed without changes. OAC 3737-1-16 limits the reimbursement or payment of third-party claims to reasonable costs for bodily injury or property damage. The rule is amended to update a reference. OAC 3737-1-19 establishes the conditions for Fund eligibility for third-party claims and is proposed without changes. OAC 3737-1-20 states that reasonable fees may be charged to persons requesting materials or services from the Board and is proposed without changes. OAC 3737-1-22 establishes the subrogation rights of the Board and is proposed without changes.

During early stakeholder outreach, the Board reviewed the proposed rules during public meetings of its Rules Committee. Stakeholders and interested parties were notified of the meeting and were sent copies of the proposed rules via email. No comments were received during that time or during the CSI public comment period.

The business community impacted by the rules includes all petroleum underground storage tank owners and operators. The adverse impacts created by the rules include the cost of fees and supplemental fees, deductible payments, the submission of information as part of an application for reimbursement, compliance with financial and technical audits, and submission of information regarding third-party claims. Fees for annual tank licenses cost \$350, with a potential fee of up to \$1,000 for late submissions. The fee for transferring a tank is \$500. The Board states that the adverse impacts created by the rules are necessary to ensure the long-term financial health of the Fund and to comply with statutory requirements.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that the Board should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.