

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: December 16, 2013

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☐ Rescinded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

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Compensation Board proposes to amend Ohio Administrative Code rule 3737-1-04 to reduce this annual fee from \$600 per tank to \$500 per tank.

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.

Sections 3737.90 and 3737.91 of the Ohio Revised Code.

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 Board and the 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 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 is necessary to provide Ohio's tank owners and operators with an affordable mechanism 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. It also helps to protect Ohio's businesses and individuals from financial insolvency in the event of a release from their underground storage tank systems.

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

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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 1, 2013, agency stakeholders were notified by email that the Petroleum UST 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 Exhibit 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 8, 2013, 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 Bruce Kranz, representing the insurance industry with experience in casualty and fire or pollution liability insurance met between 10:00 am and 11:00 am. In addition, the following stakeholders attended: David Biemel representing the Ohio Petroleum Marketers & Convenience Store Association, Christina Polesovsky representing the Ohio Petroleum Council and Tom Stephenson representing Stephenson Oil Co.

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

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 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.

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?

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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 Ohio regulation?

The Petroleum UST 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 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 \$600 to \$500.

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 amendment will save Ohio's underground storage tank community approximately \$2 million each year.

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

The annual Financial Assurance 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 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 Financial Assurance Fund (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 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 Financial Assurance 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 underground storage tanks in the ground 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 \$1000/tank.

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

The Board's staff is available to answer any questions concerning the payment of the annual Financial Assurance Fund fees. Information, including a Common Questions page, is available on the Board's website at www.petroboard.org.

Jonathan Maneval

From: Jonathan Maneval
Sent: Tuesday, October 01, 2013 12:27 PM
To: Jonathan Maneval
Subject: Petroleum Board - Finance Committee Meeting

MEETING NOTICE

There will be a Petroleum UST Release Compensation Board Finance Committee meeting on Friday, November 8, 2013 beginning at 10:00 a.m. in the conference room in the Board's office located at:

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

The committee will discuss short and long term financial projections for the Fund. 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.

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This message and any response to it may constitute a public record and thus may be publicly available to anyone who requests it.

BOARD EMAIL NOTICE LIST

Exhibit A

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BOARD EMAIL NOTICE LIST

Exhibit A

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