

# CSI - Ohio

## The Common Sense Initiative

### Business Impact Analysis

Agency Name: Petroleum UST Release Compensation Board

Regulation/Package Title: OAC Chapter 3737 Five-year Review – Rule Amendments

Rule Number(s): 3737-1-04, 3737-01-04.2, 3737-1-12, 3737-1-12.1, 3737-1-16,

3737-1-19, 3737-1-20 and 3737-1-22

Date: July 2, 2014

**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☒ Rescinded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.*

In accordance with the five-year rule review requirement of section 119.032 of the Revised Code, the Petroleum Underground Storage Tank Release Compensation Board (Board), with significant participation and input from industry representatives, agency stakeholders, agency staff, and the Assistant Attorney General assigned to the Board reviewed each of the rules, and as a result of this review, the Board voted to amend or rescind and replace the following rules:

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**Rule 3737-1-04 Annual petroleum underground storage tank financial assurance fee, certification of compliance and financial responsibility. (Rescind and replace with new)**

This rule prescribes the annual requirements of petroleum underground storage tank owners and operators ("responsible persons") for establishing coverage with the Financial Assurance Fund ("Fund"), including the payment of the annual per-tank fee, certification of compliance with applicable rules for underground storage tanks 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 an underground storage tank has occurred, and when ownership of an underground storage tank has transferred. 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 establishes the process for transferring the certificate of coverage to the new responsible person in the event of a transfer of ownership and establishes the criteria for the issuance of the certificate of coverage when no certificate was in effect at the time of transfer. 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 Board proposes to amend the rule so that when ownership of an underground storage tank has transferred and outstanding fees exist at the time of transfer, the new responsible person seeking a certificate of coverage with the Fund may elect to either pay all fees outstanding at the time of the transfer or conduct a baseline environmental site assessment (see 3737-1-04.2 below) to establish the concentrations of chemicals of concern existing in the soil and groundwater at the underground storage tank site at the time of the transfer. This election is set forth in paragraph (F)(2)(b) of the rule. It is important to note that where an underground storage tank that is being maintained in non-compliance with the fire marshal's out-of-service requirements is transferred and expeditiously removed from the ground by the new responsible person, the new responsible person is not required to remit the fees outstanding at the time of the transfer nor is the new responsible person required to conduct a baseline ESA. However, the new responsible person is required to remit the annual fees for any fiscal years during which he owned the underground storage tank system.

No other significant changes to the rule were proposed. However, the text of the existing rule was reorganized with the intent of making the rule easier to read and understand. This reorganization of the text resulted in a substantial amount of the text being stricken and re-entered as new text. Therefore, the Board proposes to rescind the existing rule and replace it with a new rule in accordance with the guidelines established by the Legislative Service Commission.

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**[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)**

**Rule 3737-1-04.2 Baseline environmental site assessment. (New rule)**

Pursuant to the proposed amendment to rule 3737-1-04, the Board proposes to adopt this new rule to set the minimum requirements for an environmental site assessment to establish the concentrations of chemicals of concern existing in the soil and groundwater at an underground storage tank site at the time ownership of the underground storage tanks transfer. The new responsible person may choose to perform this site assessment as an alternative to remitting any Fund fees that are outstanding for the underground storage tank at the time of the transfer. The rule was written to be consistent with the closure assessment activities set forth by the fire marshal in paragraph (I) of rule 1301:7-9-12.

**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 more clearly reference the lettered paragraph of the state fire marshal's rule 1301-7-9-13 that includes the immediate corrective action program task activities. The addition of the term "tier 1 notification" is proposed in order to maintain consistency with the fire marshal's rules effective July 1, 2012. The Board proposes additional minor changes to paragraphs (G) and (J) with the intent of making the text 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 change to paragraph (D) of the rule eliminates the requirement for the completion of a prescribed form when a revised cost estimate and completion schedule is to be submitted.

**Rule 3737-1-16 Third-party claims.**

The rule limits the compensation to be paid to a third-party to the reasonable costs of bodily injury or property damage that are not covered by the responsible person's insurance or another party and do not exceed the maximum disbursement amount set forth in section 3737.91 of the Revised Code. In addition, the rule sets forth the requirements for the responsible person to keep the Board informed of any actions involving the third party.

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

The rule sets forth the requirements for the filing 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 underground storage tank. The Board proposes to amend paragraph (A)(7) of the rule in order to maintain consistency with the fire marshal's rule 1301:7-9-13, which requires both a release and a suspected release to be reported.

**Rule 3737-1-20 Fees for materials and services.**

The rule provides that fees may be charged to persons requesting materials or services from the Board. The proposed amendment removes text concerning Board approval of these fee charges.

**Rule 3737-1-22 Subrogation. (Rescind and replace with new)**

The Board has the right to subrogate against any party, including the party's insurer, who contributes to or causes an accidental release of petroleum from an underground storage tank. The rule sets forth the requirements for notification to the Board when another party causes or contributes to the release. The Board proposes to amend the rule by moving the definition of "subrogation" in paragraph (D) to rule 3737-1-03, which is the definition rule. Further, the non-reimbursable costs set forth in paragraph (E) are proposed to be re-located to rule 3737-1-09, which includes other limitations of Fund coverage. No other significant changes were proposed. However, the text of the existing rule was reorganized with the intent of making the rule easier to read and understand. For instance, the Board proposes moving the thirty-day notice requirement to paragraph (A)(1) so affected persons might more quickly identify the deadline for reporting the action to the Board. The Board proposes to rescind the existing rule and replace it with a new rule in accordance with the guidelines established by the Legislative Service Commission.

**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 underground storage tank 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 underground storage tank 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.

**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)?**

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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 underground storage tank 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 underground storage tank 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 \$220 million has been reimbursed to Ohio's tank owners and operators to clean up more than 2,922 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 underground storage tanks.

**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 rule review 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; Cheryl Hilvert, representing local government; Don Kuchta, representing petroleum dealers; and Chris Geyer, representing the Ohio EPA. The committee met on February 19, 2014; March 20, 2014; May 8, 2014; and June 16, 2014.

Agency stakeholders were notified of the Rules Committee meetings by email on January 22, 2014; February 20, 2014; April 16, 2014; and May 21, 2014. 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. Stakeholders were also encouraged to provide comments on the rules by emailing [rules@petroboard.org](mailto:rules@petroboard.org).

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**[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)**

The following stakeholders were in attendance at one or more of the Rules Committee meetings: William Hills, representing the Ohio Department of Commerce, State Fire Marshal, Bureau of Underground Storage Tank Regulations (BUSTR); Ryan Sabol and Will Latt, representing Speedway, LLC; Dan Adams and Doug Darrah, representing Cardno ATC; Brent McPherson, representing BJAAM Environmental, Inc.; Brian Mead, representing the County Commissioners Association of Ohio; and Robert Eshenbaugh, representing API Ohio.

**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 General assigned to the Board met to review each of the Board's rules as part of the five-year rule review process. After discussing the Board's rules, the consensus was that minor editorial changes to rules 3737-1-12, 3737-1-12.1, 3737-1-16, 3737-1-19, 3737-1-20 and 3737-1-22 would benefit Ohio's tank owners and operators by making the rules easier to read and understand.

The significant change to rule 3737-1-04 was proposed in direct response to stakeholder comment, and this proposed change resulted in the development and proposal of the new rule 3737-1-04.2. The new draft rule 3737-1-04.2 was written with input and comment from stakeholders, with significant inclusion of comments provided by Dan Adams representing Cardno ATC and Brent McPherson representing BJAAM Environmental, Inc.

**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 Petroleum UST Release Compensation Board is the only State of Ohio 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 notifies Ohio's petroleum underground storage tank owners and operators and agency stakeholders of its rule filings through a biannual 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 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 2,800 private owners of 19,000 underground storage tanks; an additional 1,750 tanks are owned and operated by public entities.

**Rules 3737-1-04 and 3737-1-04.2**

- a.** While rule 3737-1-04 impacts all of Ohio's petroleum tank owners and operators, the proposed changes resulting from the replacement rule 3737-1-04 and proposed new rule 3737-1-04.2 will only affect a small percentage of tank owners, specifically those who acquire ownership of an underground tank system for which Fund fees are outstanding. In the last 12 months, 217 ownership transfers were processed, and fees were outstanding at the time of the transfer in only 35 of these 217 instances (16%).
- 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. The new responsible person of an underground storage tank system is also subject to a transfer fee. Each year all tank owners must also submit a completed

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**[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)**

application for a certificate of coverage. In addition, owners must provide information concerning the installation and acquisition of petroleum underground storage tank systems. Rule 3737-1-04.2 requires both an expenditure and time in order to provide the information required in the baseline environmental site assessment (“ESA”) summary report, however, compliance with this rule is not mandatory as it is an alternative to the payment of fees, if any, outstanding at the time an underground storage tank system is transferred.

- c. The annual per-tank fee is currently \$500. 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 also be assessed. Upon the transfer of an underground storage tank 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 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 amendment to rule 3737-1-04 will allow a responsible person that acquires an underground storage tank system for which outstanding fees exist and who is seeking a certificate of coverage with the Fund to provide a baseline ESA in lieu of remitting payment of the fees outstanding at the time of transfer. As often required by a lending institution in real estate financing transactions, if a Phase II ESA was or is performed within six months of the date of transfer of an underground storage tank system, the results of the Phase II ESA may be used to complete the required baseline ESA summary report; the cost to complete and submit this report is estimated to be less than \$500. However, if a Phase II ESA is not performed, based on the Fund’s experience in reimbursing costs for similar work, the cost to conduct the baseline ESA and prepare the required summary report is estimated to be between \$5,000 and \$10,000.

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

- a. Rule 3737-1-12 only impacts responsible persons seeking monies from the Fund for the reimbursement of cleanup costs or third party bodily injury and property damage. 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 recovery activities if recovery continues beyond one year; and if the estimated cost exceeds \$6,000,

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- tier 3 evaluation plans, monitoring plans, and plans to calibrate or disprove the fate and transport model.
- 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.

**Rule 3737-1-16**

- a.** Rule 3737-1-16 only impacts a responsible person, who has been determined to be eligible to claim under the Fund, 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 underground storage tank.

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- b. Rule 3737-1-16 requires administrative time and minimal cost for the responsible person to report information to the Board concerning the status of the third-party claim such as pending negotiations, litigation, mediations, settlements or judgments.
- c. Notification to the Board can be made verbally or be provided by email, fax or mail. It is estimated that such notification requires approximately one hour of the responsible person's time.

#### **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 underground storage tank.
- 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 underground storage tanks. 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, may be outsourced to 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.

#### **Rule 3737-1-20**

- a. Rule 3737-1-20 typically applies to persons requesting copies of records maintained by the Board. Historically, the number of records requests received by the agency has been minimal.
- b. The rule could adversely impact a business due to the expenditures necessary to obtain any materials or services requested from the Board.
- c. Persons seeking public records are charged only the actual cost of materials and supplies; labor costs to respond to the request are not charged. The charge for paper copies is \$.05 per page. The charge for electronic files downloaded to a compact disc is \$1 per disc. If a requester asks that documents be mailed, the requestor may also be charged the actual cost of the postage and mailing supplies. There is no charge for emailed documents.

## **Rule 3737-1-22**

- a. A responsible person is impacted by rule 3737-1-22 when another party causes or contributes to a petroleum release from the responsible person's underground storage tank system.
- b. The rule requires the report of information as a condition of compliance. Responsible persons are required to notify the Board of any other parties against whom they have or may have a right of recovery, and also to provide notification to the party allegedly causing or contributing to the release that the Board is entitled by subrogation to recover corrective action costs or the cost of compensation paid to third parties for bodily injury or property damage. The rule restricts the responsible person from entering into any settlement without prior notice and authorization by the Board. Lastly, this rule requires the responsible person to notify the Board if the responsible person initiates contact with the other party regarding the conduct or actions that resulted in the release of petroleum.
- c. Notification to the Board, can be provided by email, fax or mail. It is estimated that such notification requires approximately one hour of the responsible person's time. If the responsible person fails to provide notification to the Board when required by the rule, Fund reimbursement for eligible corrective action and / or third-party claim costs, as determined by the Fund, may be subject to a minimum reduction of 50%.

### **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 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.

### **Rules 3737-1-04 and 3737-1-04.2**

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.

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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 underground storage tank system. The required application for a certificate of coverage, along with the notification requirements of the rule, are necessary to implement the program.

In its current form, rule 3737-1-04 requires payment of all outstanding fees before a certificate of coverage may be issued for an underground storage tank. Consequently, the acquirer of a tank system for which fees are outstanding at the time of acquisition must cause any outstanding fees to be remitted or must personally remit the outstanding fees in order to obtain a certificate of coverage with the Fund. The rule change and new rule 3737-1-04.2 give the new responsible person the option of paying the outstanding fees or performing a baseline environmental site assessment (“ESA”) in lieu of paying the outstanding fees. Because real estate transactions involving petroleum fueling stations often require the performance of a Phase II ESA, the costs of preparing and providing a baseline ESA summary report using the results of the Phase II ESA will generally be less than the amount of the fees outstanding at the time of the transfer. Consequently, this rule change gives new responsible persons some flexibility in obtaining coverage with the Fund as well as possible relief from any outstanding fees. Since providing a baseline ESA is optional, any new responsible person who feels an ESA will adversely impact his business can opt to pay the outstanding fees and forego the baseline ESA.

#### **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**

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 3737-1-16**

To receive reimbursement from the Fund for third-party claims, the rule requires the responsible person to keep the Board informed of the status of any pending negotiations, litigation, mediations, settlements, or judgments. This information is necessary in order to allow the Board to protect the interests of the Fund by participating in any negotiation and settlement discussions as well as in any litigation.

**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 a responsible person who is in compliance with applicable state law and who holds a certificate of coverage with the Fund is able to file for and receive monies from the Fund.

**Rule 3737-1-20**

The Ohio Public Records Act states that a public office may charge costs for “copies, and/or for delivery or transmission” of public records. The Board believes it is appropriate to charge fees to persons receiving materials or services. Without the assessment of such fees to the requestor, the cost to provide such materials and services would be paid out of the Fund, and ultimately paid by Ohio’s tank owners.

**Rule 3737-1-22**

When a third party causes or contributes to a release of petroleum, the Board has the right of subrogation to recover costs of corrective action and compensation it has paid for bodily injury or property damage from the third party, the third party’s insurer, or any other party. In addition, where a responsible person has recovered the costs of corrective action and / or compensation paid to a third party for bodily injury or property damage from another party, the responsible person must indemnify the Board the total amount of monies received for which the Board has reimbursed the responsible person. Rule 3737-1-22 requires the responsible person to notify the Board of certain actions in order to protect the Board’s subrogation rights. The Board has a fiduciary duty to ensure monies paid out of the Fund are used in accordance with Ohio law and to take every action necessary to maintain the solvency of the Fund. Since the Fund is financed only by per-tank fees and interest earnings on those fees, monies in the Fund must be protected to ensure the annual fees remain affordable and monies are available to Ohio’s owners when the need arises.

With the exception of the replacement rule 3737-1-04 and new rule 3737-1-04.2, 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.

## **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 underground storage tank 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 Financial Assurance 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 biannual newsletter.

#### **Contact Information:**

Petroleum Underground Storage Tank Release Compensation Board

Phone: (614) 752-8963

Ohio Toll Free Phone: (800) 224-4659

Fax: (614) 752-8397

Website: [www.petroboard.org](http://www.petroboard.org)

Email: [info@petroboard.org](mailto:info@petroboard.org)



## BOARD EMAIL NOTICE LIST

Contact	Dept/Company	Email
Robert and Linda Cantrell	1st Stop, Inc.	cindy@1ststopinc.com
Mike Alexander	American Environmental Corporation	malexander@aecoh.com
Stephanie D. Black	American Environmental Corporation	SBlack@aecoh.com
Carol F. Doe	Antea USA, Inc.	carol.doe@anteagroup.com
Alan Gillespie	ARCADIS	alan.gillespie@arcadis-us.com
Cindy Capell	ARCADIS	Dan.bremer@arcadis-us.com
Dan Bremer	ARCADIS	cindy.capell@arcadis-us.com
Thomas Hite	ARCADIS	thomas.hite@arcadis-us.com
Andy Roe	Arlington/Roe & Co.	aroe@arlingtonroe.com
Tim Bowers	Associated Insurance Agencies, Inc.	tbowers@associated-ins.com
Dan Adams	ATC Associates, Inc.	dan.adams@atcassociates.com
Doug Darrah	ATC Associates, Inc.	douglas.darrah@atcassociates.com
Howard Silver	Attorney at Law	hsilver@columbus.rr.com
James Sutphin	Barney's Convenience Mart, Inc.	jsutphin@barneys-inc.com
John Bruck	BHE Environmental, Inc.	jbruck@bheenvironmental.com
A Ritter	BJAAM Environmental Inc.	Aritter@bjaam.com
Brent McPherson	BJAAM Environmental Inc.	bmcpherson@bjaam.com
Brian D. Mitchell	BJAAM Environmental Inc.	bmitchell@bjaam.com
Jodi Handlin	BJAAM Environmental Inc.	jhandlin@bjaam.com
Michael Baker	BJAAM Environmental Inc.	mbaker@bjaam.com
David Dean	Buckeye Oil Equipment Co.	ddean@buckeyeoil.com
Sheryl Knapp	Bureau of Testing and Registration, Ohio Dept. of Commerce	Sheryl.Knapp@com.state.oh.us
Timothy N. McCann	Bureau Veritas	tim.mccann@us.bureauveritas.com
Bob Engle	Campbell Oil Company	bengel@campbelloil.com
Adrian Lozier	Cardno ATC	adrian.lozier@cardno.com
Scott McCready	Cardno ATC	scott.mccready@cardno.com
Susan Sprouse	Cardno ATC	susan.sprouse@cardno.com
Art Schmitz	Certified Oil Company	aschmitz@certifiedoil.com]
Alan Cubberley	Circle K	acubberley@circlek.com
Bill Morgan	Collins Equipment Corp.	bmorgan@collinsequip.com
Brad Cole	County Commissioners Association	bcole@ccao.org
Brian Mead	County Commissioners Association of Ohio	bmead@ccao.org
Cheryl Subler	County Commissioners Association of Ohio	csubler@ccao.org
Amy Armstrong	Creek Run L.L.C. Environmental Engineering	aarmstrong@creekrun.com
Melissa Witherspoon	Delta Environmental Consultants, Inc.	mwitherspoon@wattersonenviro.com
Mike Stipp	District Petroleum	mikes@hymiler.com
Scott Earhart	Earhart Petroleum Inc.	searhart@earhartpetroleum.com
Thomas P. Sabol	Eastridge Environmental Solutions, LLC	TSabol@yahoo.com
Tracy A. Sullivan	Englefield Oil Co.	tsullivan@englefieldoil.com
Karen S. Reese	FirstEnergy Corp.	reese@firstenergycorp.com
Brian Stonemetz	Flynn Environmental, Inc.	brian@flynnenvironmental.com
Bethannm Blackburn	GES, Inc.	BBlackburn@gesonline.com
Bill Barth	GES, Inc.	BBarth@gesonline.com
Steve Betts	GES, Inc.	sbetts@gesonline.com
Mike Scheponik	GetGo	mike.scheponik@giant eagle.com
Chris Zimmerman	Gilligan Oil Co.	czimmerman@gilliganoil.com
Lou Vitantonio	Greater Cleveland Automotive Dealers Association	gcada@gcada.org
Kevin Miller	Hartley Co.	kmiller@thehartleyco.com
Barbara Knecht	HzW Environmental Consultants, LLC	bknecht@hzwenv.com

## BOARD EMAIL NOTICE LIST

Contact	Dept/Company	Email
Lucas Anthony Alexander	HZW Environmental Consultants, LLC	lalexander@hzwenv.com
Scott Nein	Independent Insurance Agents of Ohio	piaa@piaaohio.com
Terry Wilfong	Kemron Environmental Services	tlwilfong@kemron.com
Ashley Collier	Kroger Company	Ashley.Collier@Kroger.com
Dave Miller	Kroger Company	Dave.Miller@kroger.com
Tom Berger	Lykins Oil Co.	tom.berger@lykinscompanies.com
Aaron Besmer	Meijer Stores Limited Partnership	aaron.besmer@meijer.com
Nichole Martin	Musick's Service Station Maintenance, Inc.	nmartinmssm@hotmail.com
Lou Sukalski	New America Insurance	Newamlou@msn.com
Dennis Knott	Ney Oil Company	dennynkott@neyoil.com
Joe O'Brien	O'Brien Technical Services, Inc.	obejoe@roadrunner.com
Karl Gebhardt, Chief	ODNR Division of Soil and Water Resources	dswc@dnr.state.oh.us
Donald L. Mader	Ohio Association of Consulting Engineers	info@acecoho.org
Frances Lesser	Ohio Auditor's Association	flesser@caao.org
James R. Mitchell	Ohio Auto Dealers Association	webmaster@oada.com
Corey Hawkey	Ohio Board of Regents	chawkey@regents.state.oh.us
Kristin Clingan	Ohio Chamber of Commerce	occ@ohiochamber.com
Eric Norenberg	Ohio City/County Management Association	enorenberg@cityofoberlin.com
David W. Field	Ohio Cleaner's Association	david@assnoffices.com
	Ohio Contractor's Association	info@ohiocontractors.org
Lora Miller	Ohio Council of Retail Merchants	info@ohioretailmerchants.com
Glenn Sprowls	Ohio County Engineer's Association	gsprows@ceao.org
Linda Brown	Ohio Department of Commerce	Linda.Brown@com.state.oh.us
	Ohio Environmental Council	OEC@theoec.org
	Ohio Farm Bureau Federation	info@ourohio.org
Susan D. Lengal	Ohio Fire Chiefs' Association	info@ohiofirechiefs.com
Richard Sites	Ohio Hospital Association	oha@ohanet.org
	Ohio Manufacturer's Association	oma@ohiomfg.com
John Mahoney	Ohio Municipal League	jmahoney@omunileague.org
Christina H. Polesovsky	Ohio Petroleum Council	polesovskyc@api.org
Terry Fleming	Ohio Petroleum Council	ohio@api.org
Dale L. Koski	Ohio Power Company	dlkoski@aep.com
Damon F. Asbury	Ohio School Board Association	dasbury@ohioschoolboards.org
Michael Cochran	Ohio Township Association	Cochran@ohiotownships.org
Larry Woolum	Ohio Trucking Association	larry@ohiotrucking.org
Mark Musson	Ohio Turnpike Commission	mark.musson@ohioturnpike.org
Judi Henrich	Ohio Water Environment Association	info@ohiowea.org
Robert H. Pope	Ohio Water Well Association	bpope@assnsoffice.com
Tim Bechtold	Ohio Wholesale Beer/Wine Association	info@wbwao.org
Jennifer Rhoads	OPMCA	jrhoads@opmca.org
Ed Weglarz	OPRR	ssdami@voyager.net
Chris O'Neil	Pangean-CMD Associates, Inc.	coneil@pangean-cmd.com
Andrew D. Shrock	Parsons Engineering	andrew.shrock@parsons.com
	Partners Environmental Consulting	info@partnersenv.com
Joey Cupp	Pilot Travel Centers	joey.cupp@pilottravelcenters.com
Emily Mackenzie	Pinnacle Environmental Management Support, Inc.	emackenzie@pinnacleems.com
Lisa Magowan	Pinnacle Environmental Management Support, Inc.	lmagowan@pinnacleems.com
James A. Inman	Professional Service Industries, Inc. (PSI)	jim.inman@psiusa.com
Ted Green	Refuel Environmental Serv. LLC	tgreen@refuel.com

## BOARD EMAIL NOTICE LIST

Contact	Dept/Company	Email
Jeffrey Erb	Saneholtz McKarns, Inc.	jeff@saneholtz-mckarns.com
Ryan Mason	Sierra Club-Central Ohio Group	ryananthonymason@gmail.com
Ricki Slattery Starrett	Slattery Oil Co Inc	ricki@slatteryoil.com
Benny J. Reed	Speedway, LLC	bjreed@ssallc.com
Toby Rickabaugh	Speedway, LLC	TARickabaugh@speedway.com
Will Latt	Speedway, LLC	welatt@speedway.com
Jeff Bood	Spence Environmental	jeff@spenceenv.com
Jeff Bood	Spence Environmental Consulting, Inc.	jeff@spenceenv.com
Mark Rhinehart	SRW Environmental Services, Inc.	rhineham@srwenvironmental.com
Stacy Cox	SRW Environmental Services, Inc.	coxst@srwenvironmental.com
Christie Kuhlmann	Stantec Consulting Services, Inc.	christie.kuhlmann@stantec.com
William Morris	State Library of Ohio	wmorris@library.ohio.gov
Jonathan Zanders	Stone Environmental Engineering & Science, Inc.	jonzanders@stoneenvironmental.com
Anne Connelly	Sunoco, Inc.	ACCONNELLY@sunocoinc.com
Mike Byrne	Sunoco, Inc.	mbbyrne@sunocoinc.com
Patti Booker	SW Ohio Garage/Gas Dealer's Association	director@soggda.com
Sonja Ison	Swift Oil Co., Inc.	eca@swiftoil.com
Dennis Oberdove	Tank Integrity Services Inc.	obe@tankintegrity.com
Dan Batten	Tanknology	dbatten@tanknology.com
Kevin P. Reid, P. G.	Terracon Consultants	kpreid@terracon.com
Mike Cukauskas	TH Midwest Inc.	mike.cukauskas@minitmarkets.com
Dan Thompson	Thompson Petroleum	thompsonpet@frontier.com
David Plummer	TravelCenters of America	dplummer@ta-petro.com
Barb Yenke	Triumph Energy	byenke@triumphenergy.com
David P. Nye	Truenorth Energy LLC	DNYE@Truenorth.org
Denny Fee	United Dairy Farmers	dfee@udfinc.com
Kristin Watt	Vorys, Sater, Seymour & Pease	KLWatt@vorys.com
Ralph Haefner	Water Management Association of Ohio	rhaefner@usgs.gov
Kelly Bartholomew		Kbartholomew@ascendresidential.com