



MEMORANDUM

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

FROM: Sean T. McCullough, Regulatory Policy Advocate

DATE: December 19, 2014

RE: CSI Review – Annual Financial Assurance Fund Fee (OAC § 3737-1-04)

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 rule 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 November 24, 2014, the Ohio Petroleum Underground Storage Tank Release Compensation Board (the Board) submitted to CSI a rule package containing one (1) amended rule. The amended rule language proposes a change in the annual fee amount concerning the Board's Financial Assurance Account. The Board cites R.C. § 3737.90 as authority to establish this rule. The official comment period for this rule package ended December 8, 2014. No comments were submitted.

II. ANALYSIS

A. ADVERSE IMPACT ON BUSINESS

As explained by the Board in the BIA, the scope of the business community impacted by the rule is comprised of owners of petroleum underground storage tanks in Ohio (Tank Owners).

As further explained by the Board in the BIA, the Board itself and the Financial Assurance Fund (the Fund) it manages were created "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,” as a direct result of federal EPA regulations. Through a combination of further review of the BIA and independent research, CSI understands state statute requires Tank Owners to pay an annual fee to the Fund, which is required to be calculated by the Board to allow for continued financial soundness to the Fund.¹ The proposed rule changes the fee amount from the current \$500 to \$400.

As the above provision contains a fee, which is enumerated in R.C. § 107.52, the rule contains an adverse impact on business.

B. JUSTIFICATION FOR ADVERSE IMPACT

As explained by the Board in the BIA, the Board sought early input from approximately 100 stakeholders on this rule. No stakeholders voiced concerns with the fee. Further, the Board based the \$400 amount on current budget data, estimated future revenue and expenses using historical Fund data, and an estimate of unpaid reimbursement liability of the Fund. In addition to complying with federal regulations, the Board notes also that the Fund, and in turn the collection of the fee, serves to ensure Tank Owners’ business solvency in Ohio by reimbursing pertinent businesses for costs of remediation due to accidental petroleum releases, while also protecting public health.

As the Board reached out for early stakeholder input, no comments or concerns have been submitted, and the Board used scientific and numerical data to support the fee amount proposed, the adverse impact of this rule has been sufficiently justified by Board.

III. RECOMMENDATIONS

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

IV. CONCLUSION

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

cc: Mark Hamlin, Lt. Governor’s Office

¹ R.C. § 3737.91(B)