



Common Sense Initiative

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Business Impact Analysis

Agency, Board, or Commission Name: Petroleum UST Release Compensation Board

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Regulation/Package Title (a general description of the rules' substantive content):
Ohio Admin. Code Chapter 3737 Five-Year Review

Rule Number(s): 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, 3737-1-22

Date of Submission for CSI Review: July 5, 2024

Public Comment Period End Date: July 15, 2024

Rule Type/Number of Rules:

- New / rules No Change / 11 rules (FYR? Yes)
- Amended / 5 rules (FYR? Yes) Rescinded / rules (FYR?)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

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Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. **Requires specific expenditures or the report of information as a condition of compliance.**
- d. **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

Chapter 3737 of the Ohio Administrative Code consists of 23 rules adopted by the Petroleum Underground Storage Tank Release Compensation Board (Board) to implement and administer sections 3737.90 to 3737.98 of the Revised Code. In accordance with the five-year rule review requirement of section 119.032 of the Revised Code, the Board reviewed these rules with agency stakeholders and agency staff to determine whether any rules should be eliminated or amended. Following the five-year rule review, the Board voted to file the following 16 rules identified as having an adverse impact on businesses as amended (five) and no change (11) rules:

Rule 3737-1-04 Annual petroleum underground storage tank financial assurance fee, certification of compliance, and financial responsibility.

This rule prescribes the annual requirements of petroleum underground storage tank (UST) owners and operators (responsible persons) for establishing coverage with the Financial Assurance Fund (Fund), including the payment of an annual per-tank financial assurance fee, demonstration of financial responsibility for the deductible amount of coverage with the Fund, certification of compliance with applicable rules for USTs adopted by the State Fire Marshal, 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 a UST has occurred or when ownership of a UST has transferred and establishes the process for transferring the certificate of coverage to the new responsible person as well as the criteria for the issuance of the certificate of coverage when no certificate was in effect at the time of transfer. The rule sets forth the notification requirements to the responsible person and to the State 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 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. *This is a no-change rule.*

Rule 3737-1-04.1 Coverage reinstatement.

The rule provides the requirements for reinstating coverage with the Fund when responsible persons have not been issued a certificate of coverage for a petroleum UST for the prior two or more consecutive fiscal years. *This is a no-change rule.*

Rule 3737-1-05 Supplemental petroleum underground storage tank financial assurance fee.

This rule describes the standard and reduced deductible amounts of Fund coverage. It establishes the qualification for a responsible person to obtain coverage at the reduced deductible, and it sets the additional per-tank fee amount for obtaining Fund coverage with a reduced deductible. *This is a no-change rule.*

Rule 3737-1-06 The deductible and the reduced deductible.

This rule describes the standard and reduced deductible amounts of Fund coverage. It establishes the qualification for a responsible person to obtain coverage at the reduced deductible, and it sets the additional per-tank fee amount for obtaining Fund coverage with a reduced deductible.

Language within the rule was revised to make the rule easier to read and understand.

Rule 3737-1-07 Establishing fund eligibility for corrective action costs.

This rule provides the requirements for obtaining eligibility to file claims under the Fund. In addition, after a responsible person is determined to be eligible, the rule requires the responsible person to maintain eligibility by maintaining compliance with the UST regulations. If the responsible person fails to maintain compliance with the UST regulations, eligibility to file claims under the Fund may be revoked.

The proposed amendment establishes that an application for eligibility must be received within one year of the date of the release incident rather than one year from the date the release incident was required to be reported to the State Fire Marshal. A “release incident” is defined as a “release,” “suspected release,” or “confirmed release,” whichever is first discovered.

Rule 3737-1-09 Limitations of fund coverage.

This rule provides a listing of costs that are specifically excluded from Fund reimbursement.

The proposed amendment to insert paragraph (A)(17)(h) clarifies that markup on a lump sum amount that includes any of the items listed in paragraphs (A)(17)(a) through (A)(17)(g) of the rule is not reimbursable.

Rule 3737-1-10 Financial audits.

This rule authorizes the Fund’s director to perform financial audits to ensure compliance with the Board’s rules and to certify that corrective action costs submitted for reimbursement are eligible for reimbursement. *This is a no-change rule.*

Rule 3737-1-11 Technical audits.

This rule authorizes the Fund's director to conduct technical audits during the review of Claim Reimbursement Applications to ensure compliance with the Board's rules and to verify that the work performed was necessary for corrective actions. *This is a no-change rule.*

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. *This is a no-change rule.*

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 specified 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 rule change clarifies that cost pre-approval is required annually for each year that ongoing free product recovery is required by the State Fire Marshal and that failure to perform the required free product recovery does not negate the cost pre-approval requirement.

Rule 3737-1-13 Reimbursement application review.

This rule requires the director or director's designee to review the Claim Reimbursement Application and provides for notification to the responsible person of any errors or omissions. The rule establishes when additional information may be requested and sets forth deadlines for submitting the additional information. *This is a no-change rule.*

Rule 3737-1-15 Modifying the deductible or the reduced deductible.

The rule provides for the modification of the deductible and reduced deductible if necessary to ensure the solvency of the Fund and to meet the financial soundness objectives set forth in division (C) of section 3737.91 of the Revised Code. *This is a no-change rule.*

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 that 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.

The proposed change is to correct the citation of the term "property damage".

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

The rule sets forth the requirements for the filing for 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 UST. *This is a no-change rule.*

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. *This is a no-change rule.*

Rule 3737-1-22 Subrogation.

The Board has the right to subrogate against any party who contributes to or causes an accidental release of petroleum from a UST. The rule sets forth the requirements for notification to the Board. *This is a no-change rule.*

Statement concerning division (E) of section 121.82 of the Revised Code.

Does the draft rule package require insurance and/or surety products as a condition of compliance?

As a condition to receiving a certificate of coverage with the Fund, owners and operators of USTs must demonstrate financial responsibility for the Fund deductible or reduced deductible amount in compliance with rule 1301:7-9-05 of the Administrative Code, which is adopted and administered by the State Fire Marshal. In program year 2023, more than 2,800 of Ohio’s public and private UST owners and operators indicated on a Board-prescribed form that they maintained one or more of the ten financial responsibility mechanisms required by the State Fire Marshal’s rule. A List of Insurance Providers for UST Financial Responsibility Requirements published on the U.S. EPA’s website (<https://www.epa.gov/ust/list-insurance-providers-ust-financial-responsibility-requirements#list>) is an example of the availability of the insurance mechanism. In addition, a list of insurance and surety bond providers is maintained by the Board.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

Rule	Statutory Authority:	Rule Amplifies:
3737-1-04	3737.90	3737.91, 3737.92
3737-1-04.1	3737.90	3737.91
3737-1-05	3737.90	3737.91
3737-1-06	3737.90	3737.91
3737-1-07	3737.90	3737.92
3737-1-09	3737.90	3737.92
3737-1-10	3737.90	3737.92
3737-1-11	3737.90	3737.92
3737-1-12	3737.90	3737.92
3737-1-12.1	3737.90	3737.92
3737-1-13	3737.90	3737.92
3737-1-15	3737.90	3737.92

Rule	Statutory Authority:	Rule Amplifies:
3737-1-16	3737.90	3737.92
3737-1-19	3737.90	3737.92
3737-1-20	3737.90	3737.90
3737-1-22	3737.90	3737.92

4. 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 petroleum UST owners in the U.S. 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 UST systems [40 C.F.R. Part 280, Subpart H].

5. If the regulation implements a federal requirement, but includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not Applicable.

6. 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 Fund serves three vitally important public functions. First, the Fund provides an affordable mechanism necessary to fulfill the federal and state regulations that require all petroleum UST 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 UST 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 UST owners. To date, more than \$306 million has been reimbursed to Ohio's UST owners and operators to clean up more than 3,430 petroleum contaminated sites.

7. 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 USTs.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

<u>No</u>	R.C. 101.352	Request for appearance before joint committee regarding agency's reliance on principle of law or policy.
<u>No</u>	R.C. 101.353	Request for appearance before joint committee regarding agency's failure to adopt rule.
<u>No</u>	R.C. 106.032	Authority of chairperson to submit rule for review.
<u>Yes</u>	R.C. 121.93	Review of agency operations.
<u>No</u>	R.C. 121.931	Petition to restate a principle of law or policy in a rule.

The proposed change to rule 3737-1-09 is to specifically state in rule the policy of not reimbursing markup on a lump sum amount that includes any of the items listed in paragraphs (A)(17)(a) through (A)(17)(g) of the rule.

Development of the Regulation

9. 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 consists of Board Chair, James Rocco, representing petroleum refiners; Vice-Chair, Tom Stephenson, representing petroleum marketers; Steve Bergman, representing professional engineers; and Scott King, representing Director Sheryl Creed Maxfield, Ohio Department of Commerce. The Committee held a meeting to review each of the Board's rules on January 10, 2024. Agency stakeholders were notified of the Rules Committee meeting by email on December 11, 2023. A copy of the email notice along with a list of the Board's stakeholders that were contacted is attached as Exhibit A. The meeting notice was also published on the Board's website, posted at the Board's office, and sent to Gongwer News Service. The following stakeholder attended the Rules Committee meeting: Dan Adams, representing Atlas Technical Consultants. The following Board staff also attended the meeting: Starr Richmond, Executive Director; Jonathan Maneval, Assistant Director; Hannah Brame, Claims Supervisor; and Cindy Stauffer, Compliance Supervisor.

10. 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, and agency staff 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 no significant revisions to the rules were necessary. As such, only minor changes and reference citation corrections are being proposed in the rule amendments. These editorial changes do not alter the substantive content of the rules.

11. 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.

12. 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? *Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.*

Not Applicable.

13. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The Board is the only State of Ohio agency that exists to provide Ohio's petroleum UST owners with \$1 million of financial responsibility to pay for damages caused by releases from their UST systems.

14. 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 UST owners and operators and agency stakeholders of its rule filings through its website, agency correspondence, and email list. 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

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

- a. Identify the scope of the impacted business community, and**
- b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).**

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.

Rule 3737-1-04

- a.** Rule 3737-1-04 impacts all of Ohio's petroleum UST owners and operators.
- b.** Rule 3737-1-04 requires both an expenditure and the reporting of information as a condition of compliance. All UST 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. Where ownership of a UST system is transferred, the new responsible person is subject to a transfer fee. Each year all UST owners must submit a completed Application for a Certificate of Coverage. In

addition, owners must provide information concerning the installation and acquisition of petroleum UST systems.

The annual per-tank fee is currently \$350. 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 be assessed. Upon the transfer of a UST 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 State 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 UST owner that wishes to appeal a determination or an order issued by the director may file an objection via email, fax, or mail. The additional notifications required by the rule, including the notification of UST installation, removal, 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.

Rule 3737-1-04.1

- a. Rule 3737-1-04.1 only impacts tank owners and operators who have not obtained a certificate of coverage for a given UST for two or more consecutive fiscal years.
- b. In order to comply with rule 3737-1-04.1, any responsible person subject to the rule is required to submit an affidavit certifying that no release has been suspected or confirmed from the petroleum UST system for which coverage is being sought, or that any known release is in compliance with the corrective action requirements of rule 1301:7-9-13. The UST owner must also provide documentation demonstrating compliance with the State Fire Marshal's rules for the operation and maintenance of petroleum USTs. Such documentation may include, but is not limited to, copies of release detection records, results of UST and line tightness tests, and if applicable, results of corrosion protection tests, and out-of-service permits.

If a responsible person is subject to the requirements of rule 3737-1-04.1, an agency prescribed affidavit is required to be signed and notarized in order to comply with the certification requirement of the rule. Provided the responsible person is operating the UST system in compliance with the State Fire Marshal's rules, the records required to comply with the rule should be readily available to the responsible person and can be emailed, faxed, or mailed to the Board. Owners who are not in compliance with the State Fire Marshal's rules may need to work with the State Fire Marshal's office to bring the UST system into compliance before the documentation necessary to comply with the rule can be provided.

Rule 3737-1-05

- a. If assessed, the supplemental fee would impact all owners and operators of USTs in Ohio at the time of the assessment.
- b. Rule 3737-1-05 arguably may be adverse to businesses, because if implemented, would require

expenditures as a condition of compliance.

If the Board determines a supplemental fee is necessary to meet the statutory objective of financial soundness set forth in division (C) of section 3737.91 of the Revised Code, responsible persons must remit a supplemental fee to comply with the rule. Since the creation of the Fund in 1989, the Board has not found it necessary to implement a supplemental fee. Further, based on the Fund's five-year financial projections, the assessment of a supplemental fee is not anticipated.

Rule 3737-1-06

- a. Rule 3737-1-06 impacts all of Ohio's UST owners and operators.
- b. The deductible and reduced deductible amounts are set forth in the rule. No reimbursement from the Fund for the costs of corrective action or compensation to third parties for bodily injury or property damage can occur until the responsible person has incurred eligible costs that exceed the applicable deductible. Costs applied to the deductible amount are not reimbursable from the Fund. In addition, responsible persons that choose to obtain a reduced deductible will incur an additional annual per-tank fee. Under division (F) of section 3737.91 of the Revised Code, only responsible persons owning, or owning or operating, a total of six or fewer USTs may elect and obtain coverage at the reduced deductible.

The rule applies a deductible of \$55,000 for responsible persons electing coverage at the standard deductible, and \$11,000 for responsible persons electing coverage at the reduced deductible. This deductible is applied for each petroleum release for which the responsible person seeks reimbursement from the Fund. Responsible persons who qualify for Fund coverage at the reduced deductible amount may elect it by paying an additional \$200 per tank for each year in which the reduced deductible is chosen.

Rule 3737-1-07

- a. Rule 3737-1-07 impacts only responsible persons who are seeking reimbursement for corrective action costs from the Fund.
- b. The rule requires information to be provided to the Board in order to comply with the rule.

The Application for Financial Assurance Fund Eligibility required by the rule is a six-page application that can be completed by the responsible person or at the responsible person's option, an environmental consultant. In addition, a report describing the petroleum release (closure report, site assessment report, immediate corrective actions report, etc.) must be submitted with the application. Because these reports are required by the State Fire Marshal's closure assessment or corrective action rules, the only additional expenditures to the applicant are duplicating and mailing costs.

Rule 3737-1-09

- a. Rule 3737-1-09 impacts only responsible persons who have been determined eligible to file claims under the Fund for the reimbursement of corrective action costs from the Fund.
- b. The rule sets forth the limitations of Fund coverage.

By statute, the Fund exists to reimburse owners or operators of USTs for necessary corrective action costs and to compensate third parties for bodily injury and property damage associated with accidental releases of petroleum from assured USTs. Therefore, claimed costs that do not meet this requirement cannot be reimbursed and are disallowed. Currently, about 20% of the costs claimed for reimbursement are disallowed. Commonly submitted costs that are not reimbursable from the Fund include corrective action costs that are higher than what are typical; costs not necessary for or required by the State Fire Marshal's corrective action rules; costs associated with UST system testing, repairs, upgrades, and removals; and costs not timely submitted for reimbursement.

Rule 3737-1-10

- a. Rule 3737-1-10 only impacts certain responsible persons who are seeking reimbursement for corrective action costs from the Fund.
- b. The rule requires responsible persons to provide information to the Board in order to comply with the rule.

This rule authorizes the Fund's director to perform financial audits to ensure compliance with the Board's rules and to certify that corrective action costs submitted for reimbursement are eligible for reimbursement. As part of the audit, the responsible person may be required to submit additional information and documentation to support the claimed costs. The time required will vary depending upon the extent of the requested information.

Rule 3737-1-11

- a. Rule 3737-1-11 only impacts certain responsible persons who are seeking reimbursement for corrective action costs from the Fund.
- b. The rule requires responsible persons to provide information to the Board in order to comply with the rule.

This rule authorizes the Fund's director to conduct technical audits during the review of applications for reimbursement to ensure compliance with the Board's rules and to determine that the work performed was necessary for corrective actions. As part of the audit, the responsible person may be required to submit additional information and documentation explaining and justifying the work for which costs were claimed for reimbursement. The time required will vary depending upon the extent of the requested information.

Rules 3737-1-12 and 3737-1-12.1

- a. Rules 3737-1-12 and 3737-1-12.1 only impact responsible persons seeking monies from the Fund for the reimbursement of cleanup costs or compensation paid for third party bodily injury and property damage.
- 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. Costs incurred to comply with rule 3737-1-12.1, 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.

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 State 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 an extended 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 State 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 3737-1-13

- a. Rule 3737-1-13 only impacts certain responsible persons who are seeking reimbursement for corrective action costs from the Fund.
- b. The rule requires responsible persons to provide information to the Board when requested. To comply with the rule, a claim applicant, i.e. a responsible person, must submit missing documentation or information necessary to complete the Claim Reimbursement Application within 90 days of being requested. This rule could adversely impact a business if it fails to timely provide the requested information because any costs that remain undocumented after the 90-day response period cannot be reimbursed by the Fund.

To comply with the rule, the responsible person may be required to provide records, documents, and explanations of costs that are necessary to fully complete the Claim Reimbursement Application. Examples of additional information that may be required include missing portions of the Claim

Reimbursement Application, such as invoices and proof of payment documentation; environmental reports and other technical information pertaining to the cleanup; and copies of relevant correspondence received from or issued to the State Fire Marshal's Bureau of Underground Storage Tank Regulations. The amount of time and money necessary to correct errors and omissions on the Claim Reimbursement Application depends on the number of problems identified during the review of the applicant's claim. The responsible person may submit most requested information by email, fax, or mail; lengthy reports must be submitted in hard copy form.

Rule 3737-1-15

- a. Rule 3737-1-15 impacts all of Ohio's petroleum tank owners and operators.
- b. The rule provides the Board with the ability to modify the standard deductible and reduced deductible amounts set forth in rule 3737-1-06. This rule arguably could adversely affect a business if the Board determines an increase to the deductible amounts is necessary to meet the financial soundness objectives set forth in section 3737.91 of the Revised Code.

An increase in the deductible and reduced deductible amounts could result in an increase in expenditures for the responsible person if a petroleum release is discovered after the deductible amounts are increased and the corrective action costs exceed the deductible. However, if the deductible amounts are reduced, the corrective action costs the responsible person must incur before Fund reimbursement is available would decrease.

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 because of a petroleum release from an assured UST.
- 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, and judgments.

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 UST.
- 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 USTs. 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.

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, 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.

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 UST 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.

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%.

16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).

The proposed change to rule 3737-1-06 is to improve readability.

17. 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 UST 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 UST owner community as a whole.

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.

Rule 3737-1-04

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 UST 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 UST 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 UST owner community as a whole. 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 owner of the petroleum UST system. The required Application for a Certificate of Coverage, along with the notification requirements of the rule, are necessary to implement the program.

Rule 3737-1-04.1

Where a certificate of coverage has not been issued for a given petroleum UST system for two or more consecutive prior fiscal years, rule 3737-1-04.1 requires the responsible person to submit documentation demonstrating compliance with the State Fire Marshal's rules for the operation and maintenance of the subject UST before a certificate may be issued. This rule provides a responsible person with notice of non-assurability with the Fund before the responsible person experiences a release and upon application for eligibility pursuant to rule 3737-1-07, is denied eligibility to claim under the Fund. By verifying the responsible persons compliance with the State Fire Marshal's rules prior to the discovery of a release, the responsible person is provided with advance notice and afforded the opportunity to correct any issues

of non-compliance. The rule has been successful in assisting Ohio's owners and operators with becoming compliant with the rules governing the operation of their UST systems and in ensuring the responsible person is in compliance with those rules at the time of a release incident.

Rule 3737-1-05

Rule 3737-1-05 requires the responsible person to remit a supplemental fee in the event the unobligated balance in the Fund is less than \$15 million. This fee is necessary to meet the financial soundness objectives set forth in section 3737.91 of the Revised Code and ensures that a funding source will be available to Ohio's UST owners and operators to underwrite the costs necessary to remediate the environment and pay for third-party bodily injury or property damage in the event of a petroleum release.

Rules 3737-1-06

The deductible amount of coverage with the Fund is one mechanism available to the Board to ensure the continued financial solvency of the Fund as well as ensuring that the annual per-tank fee remains affordable to Ohio's petroleum UST owners and operators. The deductibles encourage UST owners and operators to operate and maintain their USTs and related equipment in a manner that reduces the likelihood of a release. Further, when a release does occur, it is to the responsible person's benefit to stay involved in and oversee the corrective action activities in order to control the costs to both the responsible person and the Fund.

Rule 3737-1-07

Rule 3737-1-07 requires a responsible person to file an eligibility application in order to receive a determination of eligibility to file claims under the Fund for corrective action costs resulting from an accidental release of petroleum. This rule serves to ensure that only an eligible responsible person may seek reimbursement and receive monies from the Fund. The rule requires the director of the Fund to verify that at the time of the release incident, a responsible person possessed a valid certificate of coverage for the UST from which the release occurred, the subject UST was being operated and maintained in compliance with the State Fire Marshal's rules, and the release was timely reported as required by the State Fire Marshal's rules.

Rule 3737-1-09

Rule 3737-1-09 establishes the limitations of coverage under the Fund and is essential in ensuring that only necessary, actual and reasonable costs associated with the clean-up of a petroleum release from assurable UST systems are reimbursed. By providing a listing of costs that are excluded from Fund reimbursement, responsible persons are provided with advance notice of costs not covered by the Fund thereby, helping owners and operators to make more informed decisions and control costs.

Rules 3737-1-10, 3737-1-11, 3737-1-12, and 3737-1-13

Rules 3737-1-10, 3737-1-11, 3737-1-12, and 3737-1-13 require a responsible person that has experienced a petroleum release to file complete claim applications and to document in both technical and financial terms the costs for which reimbursement is being sought. The rules help to ensure that only

those actual costs that are reasonable and necessary for corrective action are reimbursed by the Fund. Importantly, the rules also set 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 State 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 UST owners by helping to ensure reports and other documentation required to process the request for reimbursement are readily available.

Rule 3737-1-12.1

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 State Fire Marshal's approval; remedial action plans; free product monitoring plans; free product recovery activities if recovery continues beyond one year; and if the estimated cost exceeds \$6,000, tier 3 evaluation plans, monitoring plans, and plans to calibrate or disprove the fate and transport model. 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 UST fees affordable.

Rule 3737-1-15

Increasing or decreasing the deductible amount of coverage with the Fund is one mechanism available to the Board to ensure the continued financial solvency of the Fund as well as ensuring that the annual per-tank fee remains affordable to Ohio's petroleum UST owners and operators. The deductibles encourage UST owners and operators to operate and maintain their underground storage tanks and related equipment in a manner that reduces the likelihood of a release. Further, when a release does occur, it is to the responsible person's benefit to stay involved in and oversee the corrective action activities in order to control the costs to both the responsible person and the Fund.

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, and 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 an eligible responsible person is able to file for and receive monies from the Fund. The rule requires the director of the Fund to verify that at the time of the release incident, a responsible person

possessed a valid certificate of coverage for the UST from which the release occurred, the subject UST was being operated and maintained in compliance with the State Fire Marshal's rules, and the release incident was timely reported as required by the State Fire Marshal's rules.

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 all of Ohio's UST 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 or will pay 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.

Regulatory Flexibility

18. 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 UST 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 Fund.

19. 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.

20. 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 UST owners and operators may have concerning the Board's rules. In addition, information is published on the Board's website.

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Petroleum UST Release Compensation Board

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Fax: (614) 752-8397

Website: www.petroboard.org

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From: Info
Sent: Monday, December 11, 2023 8:48 AM
To: Info
Subject: Petroleum UST Release Compensation Board Meeting Notice

MEETING NOTICE

Board Meeting

The next Petroleum UST Release Compensation Board meeting will be held on Wednesday, January 10, 2024, at 10:00 a.m.

Rules Committee Meeting

There will be a Rules Committee meeting on Wednesday, January 10, 2024, following the Board meeting, which is anticipated to conclude at approximately 12:00 p.m.

In accordance with section 106.03 of the Ohio Revised Code, the Petroleum UST Release Compensation Board reviews each of its rules every five years to determine whether to continue without change, amend, or rescind its rules. All of the Board's rules are scheduled for review as part of the five-year rule review process.

In accordance with the requirements of 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.

The meetings will be held at the Board's office located at:

4151 Executive Parkway, Suite 350

Westerville, Ohio 43081

The Board meeting will be live-streamed via ZOOM. Information on how the public may view the meeting through ZOOM will be provided at a later date at www.petroboard.org.

The Petroleum UST Release Compensation Board is committed to providing access and inclusion and reasonable accommodation in its services, activities, programs, and employment opportunities in accordance with the Americans with Disabilities Act (ADA) and other applicable laws. To request

a reasonable accommodation due to a disability, please contact John Hickey at 614-752-8963 or jhickey@petroboard.org as soon as possible. Requests made 14 days prior to the event will generally allow us to provide seamless access, but the Petroleum UST Release Compensation Board will make every effort to meet requests made after that date.

Petroleum Underground Storage Tank Release Compensation Board

Phone: (614) 752-8963 • Toll Free Phone: (800) 224-4659 • Fax: (614) 752-8397 • Website: www.petroboard.org

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

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