

**PETROLEUM UNDERGROUND STORAGE TANK  
RELEASE COMPENSATION BOARD**

**OHIO REVISED CODE**

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**SUBSTITUTE HOUSE BILL NUMBER 421\***

**AN ACT**

To amend sections 3737.01, 3737.02, 3737.87, 3737.88, 3737.99, and 3750.13; to amend, for the purpose of adopting new section numbers as indicated in parentheses, sections 3737.87 (3737.88), 3737.88 (3737.882), and 3737.90 (3737.80); and to enact new sections 3737.87 and 3737.90 and sections 3737.881, 3737.89, 3737.891, 3737.91, 3737.92, 3737.93, 3737.94, 3737.941, 3737.942, 3737.943, 3737.944, 3737.945, 3737.946, 3737.947, 3737.948, 3737.95, 3737.96, 3737.97, and 3737.98 of the Revised Code to establish the Petroleum Underground Storage Tank Financial Assurance Fund and program to reimburse owners and operators of underground petroleum storage tanks for the costs of corrective actions and compensation paid to third parties for bodily injury or property damage resulting from releases of petroleum from those tanks; to assess an annual fee and authorize the assessment of supplemental fees on those owners and operators for the purposes of paying the costs of implementing, administering, and enforcing that program, paying the reimbursements, and paying the principal and interest on revenue bonds issued to capitalize the fund; to establish the Petroleum Underground Storage Tank Release Compensation Board to implement and administer that program; to require the certification of underground storage tank installers by the Fire Marshal; to create the Petroleum Underground Storage Tank Linked Deposit Program; and to make an appropriation.

\* This document incorporates all subsequent amendments to the Revised Code enacted by the General Assembly as of January 2019.

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***BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:***

**SECTION 1:** That sections 3737.01, 3737.02, 3737.87, 3737.88, 3737.99, and 3750.13 be amended; sections 3737.87 (3737.88), 3737.88 (3737.882), and 3737.90 (3737.80) be amended for the purpose of adopting new section numbers as indicated in parentheses; and new sections 3737.87 and 3737.90 and sections 3737.881, 3737.89, 3737.891, 3737.91, 3737.92, 3737.93, 3737.94, 3737.941, 3737.942, 3737.943, 3737.944, 3737.945, 3737.946, 3737.947, 3737.948, 3737.95, 3737.96, 3737.97, and 3737.98 of the Revised Code be enacted to read as follows:

**Sec. 3737.01 Definitions.**

As used in this chapter:

- (A) "Assistant fire marshal" means any person who is employed by the fire marshal and who carries out specific duties assigned by the fire marshal, including, but not limited to, enforcement of Chapters 3731., 3737., and 3743. of the Revised Code, fire inspection, fire code enforcement, fire investigation, fire prevention, or the regulation of underground storage tank systems as defined in section 3737.87 of the Revised Code.
- (B) "Consumer goods" means any item sold, leased, or rented primarily for personal or household use.
- (C) "Fire agency" means any state or local fire service or agency whose function is to examine the property of another person for the purpose of identifying fire safety hazards.
- (D) "Fire safety inspector" means any person who is a member of the civil service, as defined in section 124.01 of the Revised Code, or who is employed by or voluntarily serves a village or township, and who examines the property of another person for the purpose of identifying fire safety hazards.
- (E) "Person," in addition to the meaning in section 1.59 of the Revised Code, means the state and any political subdivision of the state, and any other entity, public or private.
- (F) "Responsible person" means the person responsible for compliance with the state fire code, including, but not limited to, the owner, lessee, agent, operator, or occupant of a building, premises, or vehicle.

History: 37 v H 590 (Eff 7-1-79); 141 v H 552 (Eff 9-17-86); 143 v H 421 (Eff 7-11-89); 149 v S 115. Eff 3-19-2003.

**Sec. 3737.02 Fees for inspections, etc.; federal funds for cleaning up releases.**

- (A) The fire marshal may collect fees to cover the costs of performing inspections and other duties that the fire marshal is authorized or required by law to perform. Except as provided in division (B) of this section, all fees collected by the fire marshal shall be deposited to the credit of the fire marshal's fund.
- (B)
  - (1) All of the following shall be credited to the underground storage tank administration fund, which is hereby created in the state treasury:
    - (a) Fees collected under sections 3737.88 and 3737.881 of the Revised Code for operation of the underground storage tank and underground storage tank installer certification programs;

- (b) Moneys recovered under section 3737.89 of the Revised Code for the state's costs of undertaking corrective or enforcement actions under that section or section 3737.882 of the Revised Code;
  - (c) Fines and penalties collected under section 3737.882 of the Revised Code and other moneys, including corrective action enforcement case settlements or bankruptcy case awards or settlements, received by the fire marshal under sections 3737.88 to 3737.89 of the Revised Code.
- (2) All interest earned on moneys credited to the underground storage tank administration fund shall be credited to the fund. Moneys credited to the underground storage tank administration fund shall be used by the fire marshal for implementation and enforcement of underground storage tank, corrective action, and installer certification programs under sections 3737.88 to 3737.89 of the Revised Code.
- (C) There is hereby created in the state treasury the underground storage tank revolving loan fund. The fund shall consist of amounts repaid for underground storage tank revolving loans under section 3737.883 of the Revised Code and moneys described in division (B)(1)(c) of this section that are allocated to the fund in accordance with division (D)(1) of this section. Moneys in the fund shall be used by the fire marshal to make underground storage tank revolving loans under section 3737.883 of the Revised Code.
- (D)
- (1) If the director of commerce determines that the cash balance in the underground storage tank administration fund is in excess of the amount needed for implementation and enforcement of the underground storage tank, corrective action, and installer certification programs under sections 3737.88 to 3737.89 of the Revised Code, the director may certify the excess amount to the director of budget and management. Upon certification, the director of budget and management may transfer from the underground storage tank administration fund to the underground storage tank revolving loan fund any amount up to, but not exceeding, the amount certified by the director of commerce, provided the amount transferred consists only of moneys described in division (B)(1)(c) of this section.
  - (2) If the director of commerce determines that the cash balance in the underground storage tank administration fund is insufficient to implement and enforce the underground storage tank, corrective action, and installer certification programs under sections 3737.88 to 3737.89 of the Revised Code, the director may certify the amount needed to the director of budget and management. Upon certification, the director of budget and management may transfer from the underground storage tank revolving loan fund to the underground storage tank administration fund any amount up to, but not exceeding, the amount certified by the director of commerce.
- (E) The fire marshal shall take all actions necessary to obtain any federal funding available to carry out the fire marshal's responsibilities under sections 3737.88 to 3737.89 of the Revised Code and federal laws regarding the cleaning up of releases of petroleum, as "release" is defined in section 3737.87 of the Revised Code, including, without limitation, any federal funds that are available to reimburse the state for the costs of undertaking corrective actions for such releases of petroleum. The state may, when appropriate, return to the United States any federal funds recovered under sections 3737.882 and 3737.89 of the Revised Code.

History: 137 v H 590 (Eff 7-1-79); 141 v H 552 (Eff 9-17-86); 142 v H 171 (Eff 7-1-87); 143 v H 421 (Eff 7-11-89); 147 v H 215, Eff 6-30-97; 2013 HB 59, § 101.01, eff. Sept. 29, 2013; 2014 HB 483, § 101.01, eff. Sept. 15, 2014.

**Sec. 3737.80 Chief of fire department responsible for primary coordination in emergency situation.**

In any emergency situation relating to the prevention of an imminent release of a hazardous material, to the cleanup or disposal of a hazardous material that has been released, or to the related mitigation of the effects of a release of a hazardous material, the chief of the fire department in whose jurisdiction the emergency situation is occurring or his designee is responsible for primary coordination of the on-scene activities of all agencies of the state, the United States government, and political subdivisions that are responding to the emergency situation until the chief relinquishes that responsibility to a representative of one of the responding public agencies and so notifies that representative.

As used in this section, "hazardous material" means any material that is designated as such under the "Hazardous Materials Transportation Act," 88 Stat. 2156 (1975), 49 U.S.C. 1801, as amended, and regulations adopted under it.

History: RC § 3737.90, 142 v H 428 (Eff 9-26-88); RC § 3737.80, 143 v H 421. Eff 7-11-89.

## **Underground Storage Tanks**

**Sec. 3737.87 Definitions.**

As used in sections 3737.87 to 3737.98 of the Revised Code:

- (A) "Accidental release" means any sudden or nonsudden release of petroleum that was neither expected nor intended by the owner or operator of the applicable underground storage tank system and that results in the need for corrective action or compensation for bodily injury or property damage.
- (B) "Corrective action" means any action necessary to protect human health and the environment in the event of a release of petroleum into the environment, including, without limitation, any action necessary to monitor, assess, and evaluate the release. In the instance of a suspected release, "corrective action" includes, without limitation, an investigation to confirm or disprove the occurrence of the release. In the instance of a confirmed release, "corrective action" includes, without limitation, the initial corrective action taken under section 3737.88 or 3737.882 of the Revised Code and rules adopted or orders issued under those sections and any action taken consistent with a remedial action to clean up contaminated ground water, surface water, soils, and subsurface material and to address the residual effects of a release after the initial corrective action is taken.
- (C) "Eligible lending institution" means a financial institution that is eligible to make commercial loans, is a public depository of state funds under section 135.03 of the Revised Code, and agrees to participate in the petroleum underground storage tank linked deposit program provided for in sections 3737.95 to 3737.98 of the Revised Code.
- (D) "Eligible owner" means any person that owns six or fewer petroleum underground storage tanks comprising a petroleum underground storage tank or underground storage tank system.
- (E) "Installer" means a person who supervises the installation of, performance of major repairs on site to, abandonment of, or removal of underground storage tank systems.

- (F) "Major repair" means the restoration of a tank or an underground storage tank system component that has caused a release of a product from the underground storage tank system. "Major repair" does not include modifications, upgrades, or routine maintenance for normal operational upkeep to prevent an underground storage tank system from releasing a product.
- (G) "Operator" means the person in daily control of, or having responsibility for the daily operation of, an underground storage tank system.
- (H) "Owner" means:
  - (1) In the instance of an underground storage tank system in use on November 8, 1984, or brought into use after that date, the person who owns the underground storage tank system;
  - (2) In the instance of an underground storage tank system in use before November 8, 1984, that was no longer in use on that date, the person who owned the underground storage tank system immediately before the discontinuation of its use.

"Owner" includes any person who holds, or, in the instance of an underground storage tank system in use before November 8, 1984, but no longer in use on that date, any person who held immediately before the discontinuation of its use, a legal, equitable, or possessory interest of any kind in an underground storage tank system or in the property on which the underground storage tank system is located, including, without limitation, a trust, vendor, vendee, lessor, or lessee. "Owner" does not include any person who, without participating in the management of an underground storage tank system and without otherwise being engaged in petroleum production, refining, or marketing, holds indicia of ownership in an underground storage tank system primarily to protect the person's security interest in it.

- (I) "Person," in addition to the meaning in section 3737.01 of the Revised Code, means the United States and any department, agency, or instrumentality thereof.
- (J) "Petroleum" means petroleum, including crude oil or any fraction thereof, that is a liquid at the temperature of sixty degrees Fahrenheit and the pressure of fourteen and seven-tenths pounds per square inch absolute. "Petroleum" includes, without limitation, motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.
- (K) "Petroleum underground storage tank linked deposit" means a certificate of deposit placed by the treasurer of state with an eligible lending institution pursuant to sections 3737.95 to 3737.98 of the Revised Code.
- (L) "Regulated substance" means petroleum or any substance identified or listed as a hazardous substance in rules adopted under division (D) of section 3737.88 of the Revised Code.
- (M) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of from an underground storage tank system into ground or surface water or subsurface soils or otherwise into the environment.
- (N) Notwithstanding division (F) of section 3737.01 of the Revised Code, "responsible person" means the person who is the owner or operator of an underground storage tank system.
- (O) "Tank" means a stationary device designed to contain an accumulation of regulated substances that is constructed of manufactured materials.
- (P) "Underground storage tank" means one or any combination of tanks, including the underground pipes connected thereto, that are used to contain an accumulation of regulated substances the volume of which,

including the volume of the underground pipes connected thereto, is ten per cent or more beneath the surface of the ground.

"Underground storage tank" does not include any of the following or any pipes connected to any of the following:

- (1) Pipeline facilities, including gathering lines, regulated under the "Natural Gas Pipeline Safety Act of 1968," 82 Stat. 720, 49 U.S.C.A. 1671, as amended, or the "Hazardous Liquid Pipeline Safety Act of 1979," 93 Stat. 1003, 49 U.S.C.A. 2001, as amended;
  - (2) Farm or residential tanks of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes;
  - (3) Tanks used for storing heating fuel for consumptive use on the premises where stored;
  - (4) Surface impoundments, pits, ponds, or lagoons;
  - (5) Storm or waste water collection systems;
  - (6) Flow-through process tanks;
  - (7) Storage tanks located in underground areas, including, without limitation, basements, cellars, mine workings, drifts, shafts, or tunnels, when the tanks are located on or above the surface of the floor;
  - (8) Septic tanks;
  - (9) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations.
- (Q) "Underground storage tank system" means an underground storage tank and the connected underground piping, underground ancillary equipment, and containment system, if any.
- (R) "Revenues" means all fees, premiums, and charges paid by owners and operators of petroleum underground storage tanks to the petroleum underground storage tank release compensation board created in section 3737.90 of the Revised Code; proceeds received by the board from any insurance, condemnation, or guaranty; the proceeds of petroleum underground storage tank revenue bonds; and the income and profits from the investment of any such revenues.
- (S) "Revenue bonds," unless the context indicates a different meaning or intent, means petroleum underground storage tank revenue bonds and petroleum underground storage tank revenue refunding bonds that are issued by the petroleum underground storage tank release compensation board pursuant to sections 3737.90 to 3737.948 of the Revised Code.
- (T) "Class C release" means a release of petroleum occurring or identified from an underground storage tank system subject to sections 3737.87 to 3737.89 of the Revised Code for which the responsible person for the release is specifically determined by the fire marshal not to be a viable person capable of undertaking or completing the corrective actions required under those sections for the release. "Class C release" also includes any release designated as a "class C release" in accordance with rules adopted under section 3737.88 of the Revised Code.

History: 143 v H 421. Eff 7-11-89; 2011 HB 153, § 101.01, eff. Sept. 29, 2011; 2012 SB 294, § 1, eff. Sept. 5, 2012.



**Sec. 3737.88 Underground storage tank and corrective action programs.**

(A)

- (1) The fire marshal shall have responsibility for implementation of the underground storage tank program and corrective action program for releases of petroleum from underground storage tanks established by the "Resource Conservation and Recovery Act of 1976," 90 Stat. 2795, 42 U.S.C.A. 6901, as amended. To implement the programs, the fire marshal may adopt, amend, and rescind such rules, conduct such inspections, require annual registration of underground storage tanks, issue such citations and orders to enforce those rules, enter into environmental covenants in accordance with sections 5301.80 to 5301.92 of the Revised Code, and perform such other duties, as are consistent with those programs. The fire marshal, by rule, may delegate the authority to conduct inspections of underground storage tanks to certified fire safety inspectors.
- (2) In the place of any rules regarding release containment and release detection for underground storage tanks adopted under division (A)(1) of this section, the fire marshal, by rule, shall designate areas as being sensitive for the protection of human health and the environment and adopt alternative rules regarding release containment and release detection methods for new and upgraded underground storage tank systems located in those areas. In designating such areas, the fire marshal shall take into consideration such factors as soil conditions, hydrogeology, water use, and the location of public and private water supplies. Not later than July 11, 1990, the fire marshal shall file the rules required under this division with the secretary of state, director of the legislative service commission, and joint committee on agency rule review in accordance with divisions (B) and (C) of section 119.03 of the Revised Code.
- (3) Notwithstanding sections 3737.87 to 3737.89 of the Revised Code, a person who is not a responsible person, as determined by the fire marshal pursuant to this chapter, may conduct a voluntary action in accordance with Chapter 3746. of the Revised Code and rules adopted under it for either of the following:
  - (a) A class C release;
  - (b) A release, other than a class C release, that is subject to the rules adopted by the fire marshal under division (B) of section 3737.882 of the Revised Code pertaining to a corrective action, provided that both of the following apply:
    - (i) The voluntary action also addresses hazardous substances or petroleum that is not subject to the rules adopted under division (B) of section 3737.882 of the Revised Code pertaining to a corrective action.
    - (ii) The fire marshal has not issued an administrative order concerning the release or referred the release to the attorney general for enforcement.

The director of environmental protection, pursuant to section 3746.12 of the Revised Code, may issue a covenant not to sue to any person who properly completes a voluntary action with respect to any such release in accordance with Chapter 3746. of the Revised Code and rules adopted under it.

- (B) Before adopting any rule under this section or section 3737.881 or 3737.882 of the Revised Code, the fire marshal shall file written notice of the proposed rule with the chairperson of the state fire council, and, within sixty days after notice is filed, the council may file responses to or comments on and may recommend alternative or supplementary rules to the fire marshal. At the end of the sixty-day period or

upon the filing of responses, comments, or recommendations by the council, the fire marshal may adopt the rule filed with the council or any alternative or supplementary rule recommended by the council.

- (C) The state fire council may recommend courses of action to be taken by the fire marshal in carrying out the fire marshal's duties under this section. The council shall file its recommendations in the office of the fire marshal, and, within sixty days after the recommendations are filed, the fire marshal shall file with the chairperson of the council comments on, and proposed action in response to, the recommendations.
- (D) For the purpose of sections 3737.87 to 3737.89 of the Revised Code, the fire marshal shall adopt, and may amend and rescind, rules identifying or listing hazardous substances. The rules shall be consistent with and equivalent in scope, coverage, and content to regulations identifying or listing hazardous substances adopted under the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," 94 Stat. 2779, 42 U.S.C.A. 9602, as amended, except that the fire marshal shall not identify or list as a hazardous substance any hazardous waste identified or listed in rules adopted under division (A) of section 3734.12 of the Revised Code.
- (E) Except as provided in division (A)(3) of this section, the fire marshal shall have exclusive jurisdiction to regulate the storage, treatment, and disposal of petroleum contaminated soil generated from corrective actions undertaken in response to releases of petroleum from underground storage tank systems. The fire marshal may adopt, amend, or rescind such rules as the fire marshal considers to be necessary or appropriate to regulate the storage, treatment, or disposal of petroleum contaminated soil so generated.
- (F) The fire marshal shall adopt, amend, and rescind rules under sections 3737.88 to 3737.883 of the Revised Code in accordance with Chapter 119. of the Revised Code.

History: RC § 3737.87, 137 v H 590 (Eff 11-1-78); 141 v H 552 (Eff 9-17-86); 142 v H 171 (Eff 7-1-87); RC § 3737.88, 143 v H 421 (Eff 7-11-89); 145 v H 152. Eff 7-1-93; 150 v H 516, § 1, eff. 12-30-04; 2011 SB 171, § 1, eff. June 30, 2011; 2011 HB 153, § 101.01, eff. Sept. 29, 2011; 2012 SB 294, § 1, eff. Sept. 5, 2012; 2013 HB 59, § 101.01, eff. Sept. 29, 2013; 2014 SB 3, § 1, eff. Sept. 17, 2014.

### **Sec. 3737.881 Certification of underground storage tank systems installers; training programs.**

- (A) The fire marshal shall certify underground storage tank systems installers who meet the standards for certification established in rules adopted under division (D)(1) of this section, pass the certification examination required by this division, and pay the certificate fee established in rules adopted under division (D)(5) of this section. Any individual who wishes to obtain certification as an installer shall apply to the fire marshal on a form prescribed by the fire marshal. The application shall be accompanied by the application and examination fees established in rules adopted under division (D)(5) of this section.

The fire marshal shall prescribe an examination designed to test the knowledge of applicants for certification as underground storage tank system installers in the installation, repair, abandonment, and removal of those systems. The examination shall also test the applicants' knowledge and understanding of the requirements and standards established in rules adopted under sections 3737.88 and 3737.882 of the Revised Code pertaining to the installation, repair, abandonment, and removal of those systems.

Installer certifications issued under this division shall be renewed annually, upon submission of a certification renewal form prescribed by the fire marshal, provision of proof of successful completion of continuing education requirements, and payment of the certification renewal fee established in rules adopted under division (D)(5) of this section. In addition, the fire marshal may from time to time

prescribe an examination for certification renewal and may require applicants to pass the examination and pay the fee established for it in rules adopted under division (D)(5) of this section.

The fire marshal may, in accordance with Chapter 119. of the Revised Code, deny, suspend, revoke, or refuse to renew an installer's certification or renewal thereof after finding that any of the following applies:

- (1) The applicant for certification or certificate holder fails to meet the standards for certification or renewal thereof under this section and rules adopted under it;
- (2) The certification was obtained through fraud or misrepresentation;
- (3) The certificate holder recklessly caused or permitted a person under the certificate holder's supervision to install, perform major repairs on site to, abandon, or remove an underground storage tank system in violation of the performance standards set forth in rules adopted under section 3737.88 or 3737.882 of the Revised Code.

As used in division (A)(3) of this section, "recklessly" has the same meaning as in section 2901.22 of the Revised Code.

- (B) The fire marshal shall certify persons who sponsor training programs for underground storage tank system installers who meet the criteria for certification established in rules adopted by the fire marshal under division (D)(4) of this section and pay the certificate fee established in rules adopted under division (D)(5) of this section. Any person who wishes to obtain certification to sponsor such a training program shall apply to the fire marshal on a form prescribed by the fire marshal. Training program certificates issued under this division shall expire annually. Upon submission of a certification renewal application form prescribed by the fire marshal and payment of the application and certification renewal fees established in rules adopted under division (D)(5) of this section, the fire marshal shall issue a training program renewal certificate to the applicant.

The fire marshal may, in accordance with Chapter 119. of the Revised Code, deny an application for, suspend, or revoke a training program certificate or renewal or renewal of a training program certificate after finding that the training program does not or will not meet the standards for certification established in rules adopted under division (D)(4) of this section.

- (C) The fire marshal may conduct or cause to be conducted training programs for underground storage tank systems installers as the fire marshal considers to be necessary or appropriate. The fire marshal is not subject to division (B) of this section with respect to training programs conducted by employees of the office of the fire marshal.
- (D) The fire marshal shall adopt, and may amend and rescind, rules doing all of the following:
- (1) Defining the activities that constitute supervision over the installation, performance of major repairs on site to, abandonment of, and removal of underground storage tank systems;
  - (2) Establishing standards and procedures for certification of underground storage tank systems installers;
  - (3) Establishing standards and procedures for continuing education for certification renewal, subject to the provisions of section 5903.12 of the Revised Code relating to active duty military service;
  - (4) Establishing standards and procedures for certification of training programs for installers;

- (5) Establishing fees for applications for certifications under this section, the examinations prescribed under division (A) of this section, the issuance and renewal of certificates under divisions (A) and (B) of this section, and attendance at training programs conducted by the fire marshal under division (C) of this section. Fees received under this section shall be credited to the underground storage tank administration fund created in section 3737.02 of the Revised Code and shall be used to defray the costs of implementing, administering, and enforcing this section and the rules adopted thereunder, conducting training sessions, and facilitating prevention of releases.
  - (6) That are necessary or appropriate for the implementation, administration, and enforcement of this section.
- (E) Nothing in this section or the rules adopted under it prohibits an owner or operator of an underground storage tank system from installing, making major repairs on site to, abandoning, or removing an underground storage tank system under the supervision of an installer certified under division (A) of this section who is a full-time or part-time employee of the owner or operator.
- (F) On and after January 7, 1990, no person shall do any of the following:
- (1) Install, make major repairs on site to, abandon, or remove an underground storage tank system unless the activity is performed under the supervision of a qualified individual who holds a valid installer certificate issued under division (A) of this section;
  - (2) Act in the capacity of providing supervision for the installation of, performance of major repairs on site to, abandonment of, or removal of an underground storage tank system unless the person holds a valid installer certificate issued under division (A) of this section;
  - (3) Except as provided in division (C) of this section, sponsor a training program for underground storage tank systems installers unless the person holds a valid training program certificate issued under division (B) of this section.

History: 143 v H 421. Eff 7-11-89; 2012 HB 490, § 1, eff. Sept. 28, 2012.

**Sec. 3737.882 Action to confirm or disprove suspected petroleum release; corrective actions; violations.**

- (A) If, after an examination or inspection, the fire marshal or an assistant fire marshal finds that a release of petroleum is suspected, the fire marshal shall take such action as the fire marshal considers necessary to ensure that a suspected release is confirmed or disproved and, if the occurrence of a release is confirmed, to correct the release. These actions may include one or more of the following:
- (1) Issuance of a citation and order requiring the responsible person to undertake, in a manner consistent with the requirements of section 9003 of the "Resource Conservation and Recovery Act of 1976," 98 Stat. 3279, 42 U.S.C.A. 6991b, as amended, applicable regulations adopted thereunder, and rules adopted under division (B) of this section, such actions as are necessary to protect human health and the environment, including, without limitation, the investigation of a suspected release;
  - (2) Requesting the attorney general to bring a civil action for appropriate relief, including a temporary restraining order or preliminary or permanent injunction, in the court of common pleas of the county in which a suspected release is located or in which the release occurred, to obtain the corrective action necessary to protect human health and the environment. In granting any such

relief, the court shall ensure that the terms of the temporary restraining order or injunction are sufficient to provide comprehensive corrective action to protect human health and the environment.

- (3) Entry onto premises and undertaking corrective action with respect to a release of petroleum if, in the fire marshal's judgment, such action is necessary to protect human health and the environment. Any corrective action undertaken by the fire marshal or assistant fire marshal under division (A)(3) of this section shall be consistent with the requirements of sections 9003 and 9005 of the "Resource Conservation and Recovery Act of 1976," 98 Stat. 3279, 42 U.S.C.A. 6991b, and 98 Stat. 3284, 42 U.S.C.A. 6991e, respectively, as amended, applicable regulations adopted thereunder, and rules adopted under division (B) of this section.

- (B) The fire marshal shall adopt, and may amend and rescind, such rules as the fire marshal considers necessary to establish standards for corrective actions for suspected and confirmed releases of petroleum and standards for the recovery of costs incurred for undertaking corrective or enforcement actions with respect to such releases. The rules also shall include requirements for financial responsibility for the cost of corrective actions for and compensation of bodily injury and property damage incurred by third parties that are caused by releases of petroleum. Rules regarding financial responsibility shall, without limitation, require responsible persons to provide evidence that the parties guaranteeing payment of the deductible amount established under division (E) or (F) of section 3737.91 of the Revised Code are, at a minimum, secondarily liable for all corrective action and third-party liability costs incurred within the scope of the deductible amount. The rules shall be consistent with sections 9003 and 9005 of the "Resource Conservation and Recovery Act of 1976," 98 Stat. 3279, 42 U.S.C.A. 6991b, and 98 Stat. 3284, 42 U.S.C.A. 6991e, respectively, as amended, and applicable regulations adopted thereunder.

(C)

- (1) No person shall violate or fail to comply with a rule adopted under division (A) of section 3737.88 of the Revised Code or division (B) of this section, and no person shall violate or fail to comply with the terms of any order issued under division (A) of section 3737.88 of the Revised Code or division (A)(1) of this section.
- (2) Whoever violates division (C)(1) of this section or division (F) of section 3737.881 of the Revised Code shall pay a civil penalty of not more than ten thousand dollars for each day that the violation continues. The fire marshal may, by order, assess a civil penalty under this division, or the fire marshal may request the attorney general to bring a civil action for imposition of the civil penalty in the court of common pleas of the county in which the violation occurred. If the fire marshal determines that a responsible person is in violation of division (C)(1) of this section or division (F) of section 3737.881 of the Revised Code, the fire marshal may request the attorney general to bring a civil action for appropriate relief, including a temporary restraining order or preliminary or permanent injunction, in the court of common pleas of the county in which the underground storage tank or, in the case of a violation of division (F)(3) of section 3737.881 of the Revised Code, the training program that is the subject of the violation is located. The court shall issue a temporary restraining order or an injunction upon a demonstration that a violation of division (C)(1) of this section or division (F) of section 3737.881 of the Revised Code has occurred or is occurring.

Any action brought by the attorney general under this division is a civil action, governed by the Rules of Civil Procedure and other rules of practice and procedure applicable to civil actions.

Nothing in section 3737.883 of the Revised Code limits the powers of the fire marshal or the attorney general under this division.

- (D) Orders issued under division (A) of section 3737.88 of the Revised Code and divisions (A)(1) and (C) of this section, and appeals thereof, are subject to and governed by Chapter 3745. of the Revised Code. Such orders shall be issued without the necessity for issuance of a proposed action under that chapter. For purposes of appeals of any such orders, the term "director" as used in Chapter 3745. of the Revised Code includes the fire marshal and an assistant fire marshal.
- (E) Any restrictions on the use of real property for the purpose of the achievement by an owner or operator of applicable standards pursuant to rules adopted under division (B) of this section shall be contained in a deed or in another instrument that is signed and acknowledged by the property owner in the same manner as a deed or an environmental covenant that is entered into in accordance with sections 5301.80 to 5301.92 of the Revised Code. The deed, other instrument containing the restrictions, or environmental covenant shall be filed and recorded in the office of the county recorder of the county in which the property is located. Pursuant to Chapter 5309. of the Revised Code, if the use restrictions or environmental covenant are connected with registered land, as defined in section 5309.01 of the Revised Code, the restrictions or environmental covenant shall be entered as a memorial on the page of the register where the title of the owner is registered.
- (F) Any restrictions on the use of real property for the purpose of the achievement by a person that is not a responsible person, or by a person undertaking a voluntary action of applicable standards pursuant to rules adopted under division (B) of this section shall be contained in an environmental covenant that is entered into in accordance with sections 5301.80 to 5301.92 of the Revised Code. The environmental covenant shall be filed and recorded in the office of the county recorder of the county in which the property is located. Pursuant to Chapter 5309. of the Revised Code, if the environmental covenant is connected with registered land, as defined in section 5309.01 of the Revised Code, the environmental covenant shall be entered as a memorial on the page of the register where the title of the owner is registered.

History: RC § 3737.88, 142 v H 171 (Eff 7-1-87); RC § 3737.88.2, 143 v H 421 (Eff 7-11-89); 149 v H 338. Eff 10-1-2002; 150 v H 516, § 1, eff. 12-30-04; 2013 HB 59, § 101.01, eff. Sept. 29, 2013.

**Sec. 3737.89 Responsible person is strictly liable for costs of corrective or enforcement action.**

- (A) Except when a responsible person can prove that a release of petroleum was caused solely by any one or a combination of an act of God, an act of war, or an act or omission of a third party without regard to whether any such act or omission was or was not negligent, a responsible person, notwithstanding any other provision of the Revised Code or common law of this state, is strictly liable to the state for any costs incurred for any corrective or enforcement action undertaken by the fire marshal under section 3737.882 of the Revised Code and for any costs incurred for any enforcement action undertaken by the attorney general under this section or section 3737.882 of the Revised Code with respect to a release of petroleum.

The attorney general, upon the request of the fire marshal, shall bring a civil action to recover those costs in the court of common pleas of the county in which the corrective or enforcement action was undertaken.

- (B) If a responsible person alleges that a release of petroleum was caused solely by an act or omission of a third party or was caused solely by such an act or omission in combination with an act of God or an act

of war, the responsible person shall pay to the state the cost of any corrective or enforcement action undertaken by the fire marshal under section 3737.882 of the Revised Code and any enforcement action undertaken by the attorney general under this section or section 3737.882 of the Revised Code with respect to the release and is entitled by subrogation to all rights of the state to recover those costs from the third party under division (C) of this section. The attorney general, upon the request of the fire marshal, shall bring a civil action to recover payment from the responsible party for those costs in the court of common pleas of the county in which the corrective or enforcement action was undertaken.

- (C) If the responsible person proves that a release of petroleum was caused solely by an act or omission of a third party or by such an act or omission in combination with an act of God or an act of war, the third party, notwithstanding any other provision of the Revised Code or common law of this state, is strictly liable to the state for any costs incurred for any corrective or enforcement action undertaken by the fire marshal under section 3737.882 of the Revised Code and for any enforcement action undertaken by the attorney general under this section or section 3737.882 of the Revised Code with respect to the release. The attorney general, upon the request of the fire marshal or any person entitled by subrogation to the rights of the state under division (B) of this section, may bring a civil action to recover those costs in the court of common pleas of the county in which the corrective or enforcement action was undertaken.
- (D) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the responsible person, or from any other person who may be liable under division (C) of this section, to another person the liability imposed by this section. Nothing in this division bars either of the following:
  - (1) Any agreement to insure, hold harmless, or indemnify a party to such an agreement for any liability under this section;
  - (2) A cause of action that any person has or would have against any other person by reason of subrogation or otherwise.
- (E) Nothing in this section limits the duty of a responsible person under section 3737.882 of the Revised Code and rules adopted under it to notify the fire marshal and to take action with respect to a release of petroleum.
- (F) Nothing in this section limits the right of the federal government to recover from the responsible person any federal money expended for any corrective or enforcement action as a result of a release of petroleum.

History: 143 v H 421. Eff 7-11-89.

### **Sec. 3737.891 Repealed.**

Repealed, 146 v S 162, § 2 [143 v H 421]. Eff 10-29-95.

### **Sec. 3737.90 Release compensation board.**

- (A) There is hereby created the petroleum underground storage tank release compensation board consisting of the treasurer of state and the directors of commerce and environmental protection as members ex officio, or their designees, and nine members to be appointed by the governor with the advice and consent of the senate. No more than five of the appointed members shall be affiliated with the same political

party. Of the appointed members, one shall represent the interests of petroleum refiners, one shall represent the interests of petroleum marketers, one shall represent the interests of retail petroleum dealers, one shall represent the interests of local governments, one shall have experience in casualty and fire or pollution liability insurance, two shall represent the interests of businesses that own petroleum underground storage tanks and are not primarily engaged in the sale of petroleum, and two shall be professional engineers registered under Chapter 4733. of the Revised Code with experience in geology or environmental engineering who shall represent the interests of the public and shall not be associated with the petroleum industry.

Of the initial appointments to the board, three shall be for a term ending July 11, 1990, three shall be for a term ending July 11, 1991, and three shall be for a term ending July 11, 1992. Thereafter, terms of office shall be for three years, with each term ending on the same day of the same month as did the term that it succeeds. Each member shall hold office from the date of his appointment until the end of the term for which he was appointed. Members may be reappointed. Vacancies shall be filled in the manner provided for original appointments. Any member appointed to fill a vacancy occurring prior to the expiration date of the term for which his predecessor was appointed shall hold office as a member for the remainder of that term. A member shall continue in office subsequent to the expiration date of his term until his successor takes office or until a period of sixty days has elapsed, whichever occurs first. Appointed members of the board shall be compensated on a per diem basis in accordance with division (J) of section 124.15 of the Revised Code for each day of actual attendance at meetings of the board. Members shall receive their actual and necessary expenses incurred in the performance of their duties as members of the board.

The petroleum underground storage tank release compensation board is a body both corporate and politic in this state, and the carrying out of its purposes and the exercise by it of the powers conferred by sections 3737.90 to 3737.98 of the Revised Code shall be held to be, and are hereby determined to be, essential governmental functions and public purposes of the state.

Each appointed member of the board shall give a surety bond to the state in the penal sum of not less than twenty-five thousand dollars as determined by the board. The chairman of the board shall give a bond in the penal sum of not less than fifty thousand dollars as determined by the board. Each surety bond shall be conditioned upon the faithful performance of the duties of the office, be executed by a surety company authorized to transact business in this state, be approved by the governor, and be filed in the office of the secretary of state. The surety bonds shall be given at such time as is established by the board, provided that they shall be given prior to the issuance of any revenue bonds by the board under sections 3737.90 to 3737.948 of the Revised Code.

The board shall meet at least quarterly and shall hold such additional meetings as are necessary to implement and administer sections 3737.90 to 3737.98 of the Revised Code. Additional meetings may be called in accordance with rules adopted under this section. The board shall annually select from among its members a chairman and a vice-chairman.

A majority of the members of the board constitutes a quorum for the transaction of any business of the board.

- (B) The board may:
  - (1) In accordance with Chapter 119. of the Revised Code, adopt, amend, and rescind rules establishing procedures for calling special meetings of the board;



- (2) In accordance with Chapter 119. of the Revised Code, adopt, amend, and rescind such other rules as are necessary or appropriate to implement and administer sections 3737.90 to 3737.98 of the Revised Code, including, without limitation, rules for the administration of the petroleum underground storage tank linked deposit program established under sections 3737.95 to 3737.98 of the Revised Code; rules establishing priorities for the payment of claims under section 3737.92 of the Revised Code on the petroleum underground storage tank financial assurance fund created in section 3737.91 of the Revised Code based upon a consideration of the date that a claim is originally filed and the threat posed to human health and the environment by the release to which the claim applies; and rules providing for the payment of any such claims in installments, when appropriate. The rules adopted under division (B)(2) of this section shall be consistent with section 9003 of the "Resource Conservation and Recovery Act of 1976," 98 Stat. 3279, 42 U.S.C.A. 6991b, as amended, and regulations adopted under it.
  - (3) Employ and fix the compensation of the director of the petroleum underground storage tank financial assurance fund and such other personnel as are necessary to implement and administer sections 3737.90 to 3737.98 of the Revised Code and rules adopted under them. The board may designate positions in the unclassified civil service for which it may employ persons who shall be eligible for membership in the public employees retirement system under Chapter 145. of the Revised Code and who shall not be subject to Chapter 4117. of the Revised Code.
  - (4) Enter into contracts or agreements for the purposes of sections 3737.90 to 3737.98 of the Revised Code, including, without limitation, a contract for administration of the petroleum underground storage tank financial assurance fund by an agent;
  - (5) Sue or be sued in its own name in actions arising out of any act or omission in connection with its business or affairs under sections 3737.90 to 3737.98 of the Revised Code;
  - (6) Issue revenue bonds payable solely from revenues as provided in sections 3737.94 to 3737.948 of the Revised Code for the purpose of funding the petroleum underground storage tank financial assurance fund to preserve jobs and employment opportunities in the state and to control water pollution and ensure the viability of ground water in the state by reimbursements to responsible persons for improving property damaged by releases of petroleum;
  - (7) Establish by rule the maximum percentage of the petroleum underground storage tank financial assurance fund that may be used to make petroleum underground storage tank linked deposits under sections 3737.95 to 3737.98 of the Revised Code.
- (C) Section 9.86 of the Revised Code applies to the petroleum underground storage tank release compensation board and to any officer or employee of the board, as "officer" and "employee" are defined in section 109.36 of the Revised Code.
- (D) The board, in the conduct of its functions and duties, is not subject to the regulation of the superintendent of insurance under Title XXXIX [39] of the Revised Code nor any rules of the department of insurance adopted thereunder.

History: 143 v H 421 (Eff 7-11-89); 143 v S 396. Eff 4-11-91.

**Sec. 3737.91 Financial assurance fund; fees; certificate of coverage.**

(A) There is hereby created the petroleum underground storage tank financial assurance fund, which shall be in the custody of the treasurer of state, but is not a part of the state treasury. The fund shall consist of moneys from the following sources:

- (1) All fees collected under divisions (B) and (F) of this section and all supplemental fees collected under division (C) of this section;
- (2) Interest earned on moneys in the fund;
- (3) Appropriations to the fund from the general revenue fund;
- (4) The proceeds of revenue bonds issued under sections 3737.90 to 3737.948 of the Revised Code, provided that upon resolution of the petroleum underground storage tank release compensation board created in section 3737.90 of the Revised Code, all or part of those proceeds may be deposited into a separate account of the fund. Chapters 131. and 135. of the Revised Code do not apply to the establishment, deposit, investment, application, and safeguard of any such account and moneys in any such account.

(B) For the purposes of paying the costs of implementing and administering this section and sections 3737.90 and 3737.92 of the Revised Code and rules adopted under them; payment or reimbursement of corrective action costs under section 3737.92 of the Revised Code; compensating third parties for bodily injury or property damage under that section; and payment of principal and interest on revenue bonds issued under sections 3737.90 to 3737.948 of the Revised Code to raise capital for the fund, there is hereby assessed an annual petroleum underground storage tank financial assurance fee on each tank comprising an underground storage tank or an underground storage tank system that contains or has contained petroleum and for which a responsible person is required to demonstrate financial responsibility by rules adopted by the fire marshal under division (B) of section 3737.882 of the Revised Code. The fee assessed by this division shall be paid to the board by a responsible person for each tank that is subject to the fee. The fee shall be paid not later than the first day of July of each year, except that in 1989 the fee shall be paid by either the first day of September or ninety days after July 11, 1989, whichever is later. The fee is in addition to any fee established by the fire marshal under section 3737.88 of the Revised Code.

The amount of the annual fee due in 1989 and 1990 is one hundred fifty dollars per tank per year. In 1991 and subsequent years the board shall establish the amount of the annual fee in accordance with this division. Not later than the first day of April of 1991 and each subsequent year, the board, in consultation with the administrative agent of the fund with whom the board has entered into a contract under division (B)(3) of section 3737.90 of the Revised Code, if any, shall determine the amount of the annual fee to be assessed in that year and shall adopt rules in accordance with Chapter 119. of the Revised Code to establish the fee at that amount. The fee shall be established at an amount calculated to maintain the continued financial soundness of the fund, provided that if the unobligated balance of the fund exceeds forty-five million dollars on the date that an annual determination is made, the board may assess a fee in the year to which the determination applies only to the extent required in or by, or necessary to comply with covenants or other requirements in, revenue bonds issued under sections 3737.90 to 3737.948 of the Revised Code or in proceedings or other covenants or agreements related to such bonds. Not later than the first day of May of 1991 and each subsequent year, the board shall notify each responsible person by certified mail of the amount of the annual fee per tank due in that year. As used in this paragraph, "proceedings" has the same meaning as in section 133.01 of the Revised Code.

If a responsible person is both the owner and operator of a tank, the responsible person shall pay any annual fee assessed under this division in compliance with this division and the rules adopted thereunder. If the owner of the tank and the operator of the tank are not the same person, any annual fee assessed under this division in compliance with this division and the rules adopted thereunder shall be paid by one of the responsible persons; however, all such responsible persons are liable for noncompliance with this division.

- (C) As necessary to maintain the financial soundness of the fund, the board, by rules adopted in accordance with Chapter 119. of the Revised Code, may at any time assess a supplemental petroleum underground storage tank financial assurance fee on tanks subject to the fee assessed under division (B) or (F) of this section in any fiscal year in which the board finds that the unobligated balance in the fund is less than fifteen million dollars. The board, in consultation with the fund's administrative agent, if any, shall establish the amount of the supplemental fee at an amount that will ensure an unobligated balance in the fund of at least fifteen million dollars at the end of the fiscal year in which the supplemental fee is assessed. Not less than thirty days before the date on which payment of the supplemental fee is due under the board's rules, the board shall notify each responsible person by certified mail of the amount of the supplemental fee and the date on which payment of the supplemental fee to the board is due.

If a responsible person is both the owner and operator of a tank, the responsible person shall pay any supplemental fee assessed under this division in compliance with this division and the rules adopted thereunder. If the owner of the tank and the operator of the tank are not the same person, any supplemental fee assessed under this division in compliance with this division and the rules adopted thereunder shall be paid by one of the responsible persons; however, all such responsible persons are liable for noncompliance with this division.

(D)

- (1) The board shall issue a certificate of coverage to any responsible person who has complied with all of the following:
- (a) Paid the fee assessed under division (B) or (F) of this section;
  - (b) Demonstrated to the board financial responsibility in compliance with the rules adopted by the fire marshal under division (B) of section 3737.882 of the Revised Code for the deductible amount established under division (E) of this section or, when appropriate, the reduced deductible amount established under division (F) of this section. If the responsible person utilizes self-insurance as a financial responsibility mechanism, the responsible person shall provide the board with an affidavit in which the responsible party certifies that all documentation submitted to the board is true and accurate;
  - (c) Certified to the board that for each petroleum underground storage tank system for which a certificate of coverage is sought, the responsible person is in compliance with applicable rules for petroleum underground storage tank systems that have been adopted by the fire marshal under section 3737.88 of the Revised Code.

The certificate of coverage shall state the amount of coverage to which the responsible person is entitled from the fund pursuant to division (D)(3) of this section and the time period for which the certificate provides that coverage. An issued certificate of coverage is subject to the condition that the holder timely pay any supplemental fee assessed under division (C) of this section during the time that the certificate is in effect.

- (2) The board shall not issue a certificate of coverage to any responsible person who fails to comply with divisions (D)(1)(a), (b), and (c) of this section.
- (3) The maximum disbursement from the fund for any single release of petroleum is the difference between the deductible amount established under division (E) of this section or, when appropriate, the reduced deductible amount established under division (F) of this section and one million dollars. The maximum disbursement from the fund during any fiscal year on behalf of any responsible person shall not exceed in the aggregate one million dollars less the deductible amount if the responsible person owns or operates not more than one hundred tanks comprising underground petroleum storage tanks or underground petroleum storage tank systems, shall not exceed in the aggregate two million dollars less the deductible amount if the responsible person owns or operates not more than two hundred such tanks, shall not exceed in the aggregate three million dollars less the deductible amount if the responsible person owns or operates not more than three hundred such tanks, and shall not exceed in the aggregate four million dollars less the deductible amount if the responsible person owns or operates more than three hundred such tanks. The maximum disbursement from the fund for any single release or for any fiscal year under this division does not in any manner limit the liability of a responsible person for a release of petroleum.

(E)

- (1) Except as otherwise provided in division (F) of this section, no responsible person is eligible to receive moneys from the fund under section 3737.92 of the Revised Code until the responsible person demonstrates to the board financial responsibility for the first fifty thousand dollars of the cost for corrective action for, and compensating third parties for bodily injury and property damage caused by, accidental releases of petroleum from an underground storage tank owned or operated by the responsible party. The fifty thousand dollar amount is the deductible amount for the purposes of this section and section 3737.92 of the Revised Code.
- (2) The board, in consultation with the fund's administrative agent, if any, may, by rules adopted in accordance with Chapter 119. of the Revised Code, establish for any fiscal year a deductible amount that differs from fifty thousand dollars. The deductible amount established by the board shall be such an amount as to maintain the financial soundness of the fund. Any action of the board to establish a differing deductible amount or to alter a deductible amount previously established by it shall be taken concurrently with the establishment under division (B) of this section of the annual fee due on the first day of the fiscal year in which the deductible amount will apply. If the deductible amount established under this division differs from that in effect at the time of the board's action, the board shall notify each responsible person of the change by certified mail not later than the first day of May preceding the effective date of the change.

(F)

- (1) Any responsible person owning, or owning or operating, a total of six or fewer petroleum underground storage tanks may elect in calendar years 1989 and 1990 to pay twice the amount of the per tank annual fee for each tank assessed under division (B) of this section in order to reduce the amount of the deductible established in division (E) of this section to the total amount of ten thousand dollars. The election shall be available only at the time of the payment of the annual fee and any supplemental fee. The election shall not be retroactively applied.

- (2) Any responsible person owning, or owning or operating, a total of six or fewer petroleum underground storage tanks may elect in calendar year 1991 and in each subsequent year to pay an additional fee at an amount established by the board in addition to the per tank annual fee assessed under division (B) of this section in order to reduce the deductible amount established under division (E) of this section. In calendar year 1991 and in each subsequent year, the board shall establish the amount of the additional fee and the reduced deductible amount. In determining the amount of the additional fee and the reduced deductible amount, the board shall take into consideration the effect of the additional claims paid under section 3737.92 of the Revised Code to responsible persons making an election under division (F)(2) of this section and balance that consideration with such factors as the availability of liability insurance, the difficulty of proving financial responsibility pursuant to the rules adopted by the fire marshal under division (B) of section 3737.882 of the Revised Code, and the hardship created on small owners and operators of petroleum underground storage tanks by an increase in either the additional fee or the reduced deductible amount.
  - (3) Any responsible person owning, or owning or operating, a total of six or fewer petroleum underground storage tanks who elects to pay the additional fee under divisions (F)(1) and (2) of this section shall pay any per tank supplemental fee assessed under division (C) of this section.
- (G) If the director of the fund determines that a responsible person has failed to comply with division (B), (C), or (F) of this section, the director of the fund shall notify each responsible person for the petroleum underground storage tank of the noncompliance. If, within thirty days after the notification, the responsible person fails to pay the applicable fee or any fee previously assessed upon the responsible person under this section, the director of the fund shall issue an order requiring the responsible person to pay all of the fees the responsible person owes to the fund and an additional late payment fee in the amount of one thousand dollars to the fund.

If a responsible person fails to comply with any order of the director of the fund within thirty days after the issuance of the order, the director shall notify the fire marshal of that noncompliance. Upon the request of the director of the fund, the attorney general may bring a civil action for appropriate relief, including a temporary restraining order or preliminary or permanent injunction, in the court of common pleas of the county in which the petroleum underground storage tank that is the subject of the order is located. The court shall issue an injunction upon a demonstration that a failure to comply with the director's order has occurred or is occurring.

Any orders issued by the director of the fund under this division may be appealed by the responsible person under division (F) of section 3737.92 of the Revised Code. For the purpose of an appeal of any order of the director of the fund, "determination" as used in that division includes any order of the director of the fund. The filing of a notice of appeal under this division does not operate as a stay of any order of the director of the fund.

History: 143 v H 421 (Eff 7-11-89); 144 v S 359 (Eff 12-22-92); 147 v S 46. Eff 12-18-97.

### **Sec. 3737.92 Purposes of financial assurance fund; claims for payment or reimbursement.**

- (A) The petroleum underground storage tank release compensation board created in section 3737.90 of the Revised Code shall use moneys in the petroleum underground storage tank financial assurance fund established in section 3737.91 of the Revised Code exclusively for the following purposes:

- (1) Payment of the expenses of administering the fund;
  - (2) Payment of the administrative expenses of the board;
  - (3) Payment to or reimbursement of responsible persons for the necessary cost of corrective action for and compensating third parties for bodily injury and property damage caused by accidental releases of petroleum in accordance with this section, provided that proceeds from the issuance of revenue bonds under sections 3737.90 to 3737.948 of the Revised Code may only be used for the payment to or reimbursement of responsible persons for the necessary costs of corrective action for improving property damaged by accidental releases of petroleum in accordance with this section;
  - (4) Deposit into any funds provided for in a resolution or resolutions of the board in connection with any revenue bonds issued under sections 3737.90 to 3737.948 of the Revised Code;
  - (5) Placement of petroleum underground storage tank linked deposits under sections 3737.95 to 3737.98 of the Revised Code.
- (B) A responsible person seeking to obtain from the fund payment of or reimbursement for corrective action costs for an accidental release of petroleum shall submit a claim to the board in accordance with and containing the information required by rules adopted by the board in accordance with Chapter 119. of the Revised Code. Before authorizing any disbursement from the fund to pay all or any portion of a claim submitted under this division, the director of the fund shall first determine that the claim meets all of the following criteria:
- (1) The responsible person is eligible under division (D) of this section to receive payment of or reimbursement for the corrective action costs from the fund;
  - (2) The corrective action performed or to be performed has been authorized by the fire marshal under section 3737.882 of the Revised Code and rules adopted under that section;
  - (3) The costs of performing the corrective action are necessary to comply with the rules of the fire marshal adopted under sections 3737.88 and 3737.882 of the Revised Code governing corrective actions.
- (C) A responsible person seeking to obtain from the fund payment of or reimbursement for compensation paid or to be paid to third parties for bodily injury or property damage caused by an accidental release of petroleum shall submit a claim to the board in accordance with and containing the information required by rules adopted by the board in accordance with Chapter 119. of the Revised Code. Before authorizing any disbursement from the fund to pay all or any portion of a claim submitted under this division, the director of the fund shall first determine that the claim meets both of the following criteria:
- (1) The responsible person who submitted the claim is eligible under division (D) of this section to receive payment of or reimbursement for the third-party compensation from the fund;
  - (2) There is a legally enforceable judgment against the responsible person for bodily injury or property damage to one or more third parties resulting from the release in the amount stated in the claim, or, if there is a settlement with a third party as a result of the release, the amount of the settlement stated in the claim is reasonable.
- (D) A responsible person is not eligible to receive payment or reimbursement from the fund under division (B) or (C) of this section unless all of the following conditions are met:

- (1) At the time that the release was first suspected or confirmed, a responsible person possessed a valid certificate of coverage issued by the board under division (D) of section 3737.91 of the Revised Code for the petroleum underground storage tank system from which the release occurred;
  - (2) One of the following applies:
    - (a) The petroleum underground storage tank system from which the release occurred was registered in compliance with rules adopted by the fire marshal under section 3737.88 of the Revised Code when the occurrence of the release was first suspected or confirmed;
    - (b) The fire marshal has recommended that payment or reimbursement be made because good cause existed for the responsible person's failure to have so registered the petroleum underground storage tank system, and the responsible person has registered the petroleum underground storage tank system with the fire marshal and paid all back registration fees payable under those rules for registration of the system from the time the responsible person should have, but failed to register the system.
  - (3) The fire marshal has determined that, when the claim was filed, a responsible person was in compliance with all orders issued under sections 3737.88 and 3737.882 of the Revised Code regarding the petroleum underground storage tank system from which the release occurred;
  - (4) A responsible person demonstrates financial responsibility for the deductible amount applicable under section 3737.91 of the Revised Code for the petroleum underground storage tank system from which the release has occurred;
  - (5) The responsible person has not falsified any attestation contained on a registration application required by rules adopted under section 3737.88 of the Revised Code;
  - (6) The petroleum underground storage tank system from which the release occurred was in compliance with rules, other than rules regarding registration, adopted by the fire marshal under section 3737.88 of the Revised Code when the occurrence of the release was first suspected or confirmed.
- (E) The director of the fund may make a determination to approve or disapprove a claim and to authorize a disbursement from the fund for payment of an approved claim administratively without a hearing. If the director of the fund makes a determination regarding a claim that is inconsistent with a recommendation or determination of the fire marshal for purposes of division (B)(2) or (3) or (D)(2), (3), or (5) of this section, the director shall detail those inconsistencies in a written finding of fact before authorizing any disbursement from the fund for payment of the claim. Upon making a determination of a claim under this section, the director of the fund shall provide written notice of the determination and a copy of any written finding of fact accompanying the determination to the responsible person who submitted the claim and to the fire marshal.
- (F) If the responsible person who submitted a claim under this section or the fire marshal objects to the determination of the claim made by the director of the fund and files an objection to the determination with the board within thirty days after the mailing of the notification of the determination and finding of fact, if any, the board shall appoint a referee to conduct an adjudication hearing on the determination. The adjudication hearing shall be conducted in accordance with section 119.09 of the Revised Code. For the purposes of adjudication hearings on determinations of the director of the fund, the term "agency" as used in that section includes the board.

If any party is aggrieved by an order of the board made after the adjudication hearing on the determination, the party may appeal the order in accordance with section 119.12 of the Revised Code. For the purposes of appeals of any such orders, the terms "fire marshal" and "building" as used in that section include the board and petroleum underground storage tank, respectively.

- (G) Neither the state, the board, nor the director of the fund is liable to any responsible person to pay the cost of any corrective action or of third party compensation for a release of petroleum when the fund is depleted of moneys because the amount of the claims made on the fund exceeds the unobligated balance in the fund. However, upon assessing and collecting a supplemental fee under division (C) of section 3737.91 of the Revised Code, the board shall again consider the claim of a responsible person whose claim was not initially honored because of the insufficiency of unobligated balances in the fund to pay that person's claim.

The inability of a responsible person to obtain money from the fund does not in any manner limit the liability of a responsible person for a release of petroleum.

- (H) Neither the right to apply for payment or reimbursement nor the receipt of payment or reimbursement under this section limits the liability of any responsible person to the state for the payment of any corrective action or enforcement costs under sections 3737.882 and 3737.89 of the Revised Code, or to any third party for bodily injury or property damage, resulting from a release of petroleum from an underground storage tank system owned or operated by the responsible person. Neither the right to apply for payment or reimbursement under this section nor any delay by the board or director of the fund in acting upon any claim for any such payment or reimbursement limits or postpones the duty of any responsible person to comply with any order of the fire marshal issued under section 3737.88 or 3737.882 of the Revised Code.
- (I) The board, upon payment to or reimbursement of a responsible person from the fund for corrective action costs or the cost of compensation to third parties for bodily injury or property damage, is entitled by subrogation to all rights of the responsible person to recover those costs from any other person. The attorney general, upon the request of the board, may bring a civil action to recover those costs in the court of common pleas of the county in which the release of petroleum occurred.
- (J) Nothing in this section limits the right of the federal government to recover from the responsible person any federal money expended for any corrective or enforcement action as a result of a release of petroleum.
- (K) If the responsible person described in division (D) of this section is a state agency, any payments or reimbursements received by the state agency under this section shall be deposited into the fund from which the expenditures for the corrective action or third party compensation originally were made.

History: 143 v H 421 (Eff 7-11-89); 146 v H 748 (Eff 9-17-96); 147 v S 46. Eff 12-18-97.

### **Sec. 3737.93 Transferor of petroleum to give notice of registration requirements.**

During the period commencing ninety days after the effective date of this section and ending on January 1, 1991, a person who transfers title to petroleum that is placed by the person directly into an underground storage tank of the transferee shall provide written notice to the transferee of the requirements for the registration of underground storage tanks established by rules adopted under sections 3737.88 and 3737.882 of the Revised Code.



No person shall fail to comply with this section.

History: 143 v H 421. Eff 7-11-89.

**Sec. 3737.94 State policy governing compensation board; revenue bonds.**

- (A) It is hereby declared to be the public policy of the state through the operations of the petroleum underground storage tank release compensation board under sections 3737.90 to 3737.948 of the Revised Code to contribute toward one or more of the following: to preserve and protect the water resources of the state and to prevent, abate, or control the pollution of water resources, particularly ground water, for the protection and preservation of the public health, safety, convenience, and welfare, to assist in the financing of repair and replacement of petroleum underground storage tanks and to improve property damaged by any petroleum releases from those tanks, and to preserve jobs and employment opportunities or improve the economic welfare of the people of the state. In furtherance of that public policy and pursuant to Section 13 of Article VIII, Ohio Constitution, the petroleum underground storage tank release compensation board may determine the amount of reimbursement to responsible persons for costs necessary to improve property damaged by accidental releases of petroleum and to have been incurred in anticipation of reimbursement by the board and may issue revenue bonds payable solely from revenues of the board to pay the costs incurred by the responsible person for improving the property. Determination by the board that the amount of reimbursement is or was necessary to improve property so damaged and was incurred in anticipation of reimbursement by the board shall be conclusive for the purposes of issuance of revenue bonds.
- (B) The board may, from time to time, issue revenue bonds of the state in such principal amount as determined by the board to be necessary to implement division (A) of this section. Determination by the board that the issuance of revenue bonds is necessary to implement division (A) of this section shall be conclusive. Every issue of bonds shall be special obligations of the board payable solely from premiums, charges, and fees collected by or on behalf of the board from responsible persons and by resolution of the board pledged for such payment, without preference or priority of the first bonds issued, subject only to any agreements with the holders of particular bonds pledging any particular revenues. Such a pledge is valid and binding from the time the pledge is made, and the revenues so pledged and thereafter received by the board are immediately subject to the lien of the pledge without any physical delivery thereof or further act. The lien of any such pledge is valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the board, irrespective of whether the parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the board. Premiums, charges, and fees received by the board and pledged in accordance with this division shall be expended or set aside as may be provided in the resolution or trust agreement securing the revenue bonds in such funds and in such manner as may be provided in the resolution or trust agreement.
- (C) Whether or not the bonds are of such form and character as to be negotiable instruments, the bonds shall have all the qualities and incidents of negotiable instruments, subject only to the provisions of the bonds for registration as provided in division (D) of this section.
- (D) The board shall authorize revenue bonds by resolution. The bonds shall bear such date or dates and shall mature at such time or times not exceeding forty years from the date of issue as the resolution or resolutions provide. The bonds shall bear interest at such rate or rates, which may be a variable rate or

rates and may contain a maximum rate, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption and other terms as the board authorizes. The bonds of the board may be sold by the board, at public or private sale, at or not less than the price or prices the board determines. The chairman and vice-chairman of the board shall execute the bonds, either or both of whom may use a facsimile signature; the official seal of the board or a facsimile thereof shall be affixed thereto or printed thereon and attested, manually or by facsimile signature, by the chairman of the board; and any coupons attached thereto shall bear the signature or facsimile signature of the chairman of the board. In case any officer whose signature, or a facsimile of whose signature, appears on any bonds or coupons ceases to be an officer before delivery of the bonds, the signature or facsimile remains sufficient for all purposes the same as if he had remained in office until delivery, and in case the seal of the board has been changed after a facsimile has been imprinted on such bonds, the facsimile seal remains sufficient for all purposes.

- (E) Any resolution or resolutions authorizing any bonds or any issue thereof may contain provisions, subject to such agreements with bondholders as may then exist, which provisions shall be a part of the contract with the holders thereof, as to the:
- (1) Pledging of any payments received and of any revenues of the board to secure the payment of the revenue bonds or of any issue thereof;
  - (2) Use and disposition of the revenues of the board;
  - (3) Setting aside of reserve funds or replacement and improvement funds and the regulation and disposition thereof;
  - (4) Crediting of the proceeds of the sale of bonds to and among the funds referred to or provided for in the resolution authorizing the issuance of the bonds;
  - (5) Limitations on the purpose to which the proceeds of the sale of the bonds may be applied and pledging the proceeds to secure the payment of the bonds or of any issue thereof;
  - (6) Limitations on the issuance of additional bonds;
  - (7) Terms upon which additional bonds may be issued and secured;
  - (8) Procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which that consent may be given;
  - (9) Limitations on the amount of moneys to be expended by the board for operating, administrative, or other expenses of the board;
  - (10) Securing any bonds by a trust agreement;
  - (11) Bond insurance, letters of credit, and related agreements;
  - (12) Any other terms of the revenue bonds or other matters, of like or different character, that in any way affect the security or protection of the bonds.
- (F) The board may appoint paying agents, bond registrars, authenticating agents, securities depositories, and transfer agents, retain the services of financial advisers, attorneys, and accounting experts, and retain or contract for the services of marketing, remarketing, indexing, and administrative agents, other consultants, and independent contractors, including printing services, as are necessary in the board's

judgment to carry out sections 3737.90 to 3737.948 of the Revised Code. Financing costs are payable, as provided in the bond proceedings, from the proceeds of the obligations or from other moneys available for that purpose.

- (G) Neither the members of the board nor any person executing the bonds is liable personally on the bonds or is subject to any personal liability or accountability by reason of the issuance thereof.

History: 143 v H 421. Eff 7-11-89.

#### **Sec. 3737.941 Application of other bond laws.**

The issuance of revenue bonds under sections 3737.90 to 3737.948 of the Revised Code need not comply with any other law applicable to the issuance of bonds, except sections 9.96 and 9.97 of the Revised Code.

History: 143 v H 421. Eff 7-11-89.

#### **Sec. 3737.942 Trust agreement to secure bonds; rights of bondholders.**

- (A) The petroleum underground storage tank release compensation board may secure any revenue bonds issued under sections 3737.90 to 3737.948 of the Revised Code by a trust agreement between the board and a corporate trustee, which trustee may be any trust company or bank having the powers of a trust company within or without the state.
- (B) Any trust agreement may:
  - (1) Pledge or assign revenues of the board to be received;
  - (2) Set forth the rights and remedies of the bondholders and of the trustee and restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing similar bonds;
  - (3) Contain such other provisions as the board considers reasonable and proper for the security of the bondholders.
- (C) Any trust agreement or any resolution providing for the issuance of bonds may contain provisions for protecting and enforcing the rights and remedies of the bondholders as are reasonable and proper and not in violation of law, including the custody, safeguarding, and application of all moneys.
- (D) All expenses incurred in carrying out the provisions of any trust agreement may be treated as a part of the cost of the operation of the petroleum underground storage tank financial assurance fund.

History: 143 v H 421. Eff 7-11-89.

#### **Sec. 3737.943 Enforcement of bondholder rights.**

Any holder of revenue bonds issued under sections 3737.90 to 3737.948 of the Revised Code, or any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights given by those sections may be restricted by the applicable resolution or a trust agreement, may by suit, action, mandamus, or other proceedings protect and enforce any rights under the laws of the state or granted under those sections, the trust agreement, or the resolution authorizing the issuance of the bonds, and may enforce and compel the performance of all duties required by those sections, or by the trust agreement or resolution, to

be performed by the petroleum underground storage tank release compensation board or any officer thereof, provided that no holder has any right to have the state or the board levy any tax or excises.

History: 143 v H 421. Eff 7-11-89.

**Sec. 3737.944 Bonds are not debt or pledge of faith and credit.**

Revenue bonds issued under sections 3737.90 to 3737.948 of the Revised Code do not constitute a debt, or a pledge of the faith and credit, of the state or of any political subdivision thereof, and the holders thereof have no right to have taxes levied by the general assembly or the taxing authority of any political subdivision of the state for the payment of the principal thereof or interest thereon. The bonds are payable solely from the revenues and funds pledged for their payment as authorized by those sections. All bonds shall contain on the face thereof a statement to the effect that the bonds, as to both principal and interest, are not debts of the state or any political subdivision thereof, but are payable solely from revenues and funds pledged for their payment. Pursuant to Section 13 of Article VIII, Ohio Constitution, such revenue bonds shall not be deemed to be debts or bonded indebtedness of the state under any other section of Article VIII or Sections 6 and 11 of Article XII, Ohio Constitution.

All expenses incurred in carrying out sections 3737.90 to 3737.948 of the Revised Code are payable solely from funds provided under section 3737.91 of the Revised Code. Those sections do not authorize the petroleum underground storage tank release compensation board to incur indebtedness or liability on behalf of or payable by the state or any political subdivision thereof.

History: 143 v H 421. Eff 7-11-89.

**Sec. 3737.945 Investment of funds by board.**

Moneys in the funds of the petroleum underground storage tank release compensation board, except as otherwise provided in any resolution authorizing the issuance of its revenue bonds or in any trust agreement securing the same, in excess of current needs, may be invested by the board in notes, bonds, or other obligations of the United States, or of any agency or instrumentality thereof, or in obligations of this state or any political subdivision thereof. Income from all such investments of moneys in any fund shall be credited to such funds as the board determines, subject to the provisions of any resolution or trust agreement, and the investments may be sold as the board determines.

History: 143 v H 421. Eff 7-11-89.

**Sec. 3737.946 Refunding bonds.**

The petroleum underground storage tank release compensation board may authorize and issue revenue bonds for the refunding of previously issued revenue bonds for either of the following purposes:

- (A) Refunding any revenue bonds previously issued by the board when the revenue pledged for the payment of those bonds is insufficient to pay the revenue bonds that have matured or are about to mature or to maintain reserve or other funds required by the applicable resolution or trust agreement;
- (B) Refunding any revenue bonds previously issued by the board when the refunding bonds to be issued will bear interest at a lower rate than the revenue bonds to be refunded or when the board has determined that

it is reasonably anticipated that the interest cost of the refunding bonds will be less than the interest cost of the revenue bonds to be refunded. Such a determination by the board shall be conclusive.

The terms of issuance and sale of refunding bonds issued under this section shall be the same as provided in sections 3737.90 to 3737.948 of the Revised Code for any other revenue bonds. Refunding bonds issued under this section shall be deemed to be issued for those purposes for which prior revenue bonds were issued under those sections and may be issued in amounts sufficient for retirement of previously issued revenue bonds, for establishment of reserves as required by the refunding bonds or the resolution authorizing or the trust agreement securing the refunding bonds, and for payment of any fees and expenses incurred or to be incurred in connection with that issuance and refunding.

History: 143 v H 421. Eff 7-11-89.

### **Sec. 3737.947 Bonds are lawful investments, security for public deposits.**

All revenue bonds issued under sections 3737.90 to 3737.948 of the Revised Code are lawful investments of banks, societies for savings, savings and loan associations, trust companies, trustees, fiduciaries, insurance companies, including domestic for life and domestic not for life, trustees or other officers having charge of sinking and bond retirement or other special funds of political subdivisions and taxing districts of this state, the commissioners of the sinking fund of the state, the administrator of workers' compensation, the state teachers retirement system, the public employees retirement system, the school employees retirement system, and the Ohio police and fire pension fund, and are acceptable as security for the deposit of public moneys.

History: 143 v H 421 (Eff 7-11-89); 145 v H 107 (Eff 10-20-93); 146 v H 7 (Eff 9-1-95); 148 v H 222, Eff 11-2-99.

### **Sec. 3737.948 Purpose of exercise of powers; tax exemption.**

The exercise of the powers granted by sections 3737.90 to 3737.948 of the Revised Code shall be in all respects for the benefit of the people of the state, for the improvement of their health, safety, convenience, and welfare, and for the enhancement of their residential, agricultural, recreational, economic, commercial, and industrial opportunities and is a public purpose. Because the oversight of corrective actions and victim compensation concerning releases of petroleum constitutes the performance of essential governmental functions, the petroleum underground storage tank release compensation board is not required to pay any taxes upon any property acquired or used by the board under sections 3737.90 to 3737.948 of the Revised Code, or upon the income therefrom.

History: 143 v H 421. Eff 7-11-89.

### **Sec. 3737.95 Linked deposit program to encourage low cost funds for tank and system replacement and rehabilitation.**

The general assembly finds that there exists in the state an inadequate supply of credit and loan financing at affordable interest rates for the purpose of replacing or improving petroleum underground storage tanks and tank systems, which makes it difficult for persons who store petroleum or petroleum products in petroleum underground storage tanks to continue operations at present levels in an environmentally sound manner and has an adverse effect upon the economic welfare of the people of the state. The petroleum underground storage

tank linked deposit program provided for in sections 3737.95 to 3737.98 of the Revised Code is intended to provide a statewide availability of lower cost funds for lending to persons who own six or fewer petroleum underground storage tanks. Accordingly, it is declared to be the public policy of the state through the petroleum underground storage tank linked deposit program to encourage the availability of low-cost funds for the replacement and rehabilitation of tanks and tank systems and thereby preserve the economy and protect human health and the environment of the state.

History: 143 v H 421. Eff 7-11-89.

**Sec. 3737.96 Application for loans; loan package forwarded to compensation board.**

- (A) An eligible lending institution that desires to receive a petroleum underground storage tank linked deposit shall accept and review applications for loans from eligible owners. The lending institution shall apply all the usual lending standards to determine the creditworthiness of each eligible owner.
- (B) An eligible owner shall certify on his loan application that the reduced rate loan will be used exclusively for the replacement or improvement of petroleum underground storage tanks in compliance with division (A) of section 3737.88 of the Revised Code. Whoever knowingly makes a false statement concerning an application is guilty of the offense of falsification under section 2921.13 of the Revised Code.
- (C) In considering which eligible owners to include in the petroleum underground storage tank linked deposit loan package for reduced rate loans under division (D) of this section, the eligible lending institution shall give priority to the economic needs of the area in which the owners' tanks are located and such other factors as the eligible lending institution considers appropriate to determine the relative financial needs of the eligible owners.
- (D) The eligible lending institution shall forward to the petroleum underground storage tank release compensation board created in section 3737.90 of the Revised Code a petroleum underground storage tank linked deposit loan package, in the form and manner prescribed by the board. The package shall include information regarding the amount of the loan requested and the number of tanks to be replaced by each eligible owner and any other information required by the board. The institution shall certify that each applicant is an eligible owner and shall for each applicant certify the present borrowing rate applicable to each specific eligible owner.

History: 143 v H 421. Eff 7-11-89.

**Sec. 3737.97 Acceptance or rejection of loan package; placement of CDs with lending institution; agreement with board.**

- (A) The petroleum underground storage tank release compensation board may accept or reject a petroleum underground storage tank linked deposit loan package or any portion thereof, based upon the board's evaluation of the eligible owners included in the package and the amount of funds to be deposited from the petroleum underground storage tank financial assurance fund created under section 3737.91 of the Revised Code.
- (B) Upon acceptance of the petroleum underground storage tank linked deposit loan package or any portion thereof, the board may direct the treasurer of state to place certificates of deposit from moneys contained in the fund with the eligible lending institution at a rate below the current market rates determined and

calculated by the treasurer of state. When necessary, the board may direct the treasurer to place certificates of deposits prior to the acceptance of a petroleum underground storage tank linked deposit loan package.

- (C) The eligible lending institution shall enter into a petroleum underground storage tank linked deposit agreement with the board that shall include the requirements necessary to carry out the purposes of sections 3737.95 to 3737.98 of the Revised Code. The agreement may include a specification of the period of time during which the eligible lending institution is to lend funds upon the placement of a linked deposit and shall include provisions for the certificate of deposit to be placed for any maturity considered appropriate by the board, not to exceed two years, and authority for it to be renewed for up to an additional two years at the option of the board. Interest shall be paid at times determined by the board.
- (D) Eligible lending institutions shall comply fully with sections 3737.95 to 3737.98 of the Revised Code.

History: 143 v H 421. Eff 7-11-89.

**Sec. 3737.98 Lending of funds; monitoring of compliance; notice of program; annual report by board.**

- (A) Upon placement of a petroleum underground storage tank linked deposit with an eligible lending institution, the institution shall lend the funds to each approved eligible owner listed in the petroleum underground storage tank linked deposit loan package required by division (D) of section 3737.96 of the Revised Code and in accordance with the linked deposit agreement required by division (C) of section 3737.97 of the Revised Code. The loan shall be at a rate below the present borrowing rate determined in the agreement with the petroleum underground storage tank release compensation board applicable to each eligible owner. A certificate of compliance with this section, in the form and manner prescribed by the board, shall be required for the eligible lending institution. The borrowing rate set by the agreement shall be uniform and may not be revised during the period of the deposit.
- (B) The board shall take any and all steps necessary to implement the petroleum underground storage tank linked deposit program and to monitor the compliance of eligible lending institutions and eligible owners, including the development of guidelines for those purposes as necessary.
- (C) The board and the fire marshal shall notify owners of petroleum underground storage tanks of the linked deposit program and its eligibility requirements. Annually, on or before the first day of February, the board shall report on the petroleum underground storage tank linked deposit program for the preceding calendar year to the governor, speaker of the house of representatives, and president of the senate. The speaker of the house of representatives and president of the senate shall transmit copies of the report to the chairmen of their respective standing committees that customarily consider legislation regarding underground storage tanks and the environment. The report shall set forth the petroleum underground storage tank linked deposits made by the board during the preceding year and shall include information regarding the nature, terms, and amounts of loans upon which the linked deposits were made and the eligible owners to which the loans were made.

History: 143 v H 421. Eff 7-11-89.

**Sec. 3737.99 Penalties.**

- (A) Whoever violates section 3737.28 of the Revised Code may be summarily punished, by the officer concerned, by a fine of not more than one hundred dollars or commitment to the county jail until that person is willing to comply with the order of such officer.
- (B) Except as a violation of section 2923.17 of the Revised Code involves subject matter covered by the state fire code and except as such a violation is covered by division (G) of this section, whoever violates division (A) of section 3737.51 of the Revised Code is guilty of a misdemeanor of the first degree.
- (C) Whoever violates section 3737.61 of the Revised Code is guilty of a minor misdemeanor.
- (D) Whoever violates section 3737.62 or 3737.64 of the Revised Code is guilty of a misdemeanor of the fourth degree.
- (E) Whoever violates section 3737.63 or division (A) or (B) of section 3737.65 of the Revised Code is guilty of a misdemeanor of the third degree.
- (F) Whoever violates division (C)(3) or (D)(5) of section 3737.73 of the Revised Code shall be fined one thousand dollars.
- (G) Whoever violates section 3737.66 of the Revised Code is guilty of a misdemeanor of the first degree.
- (H) Whoever knowingly violates division (C) of section 3737.882 of the Revised Code is guilty of an unclassified felony and shall be fined not more than twenty-five thousand dollars or imprisoned for not more than fourteen months, or both. Whoever recklessly violates division (C) of section 3737.882 of the Revised Code is guilty of a misdemeanor of the first degree.
- (I) Whoever knowingly violates division (F)(1), (2), or (3) of section 3737.881 or section 3737.93 of the Revised Code is guilty of a misdemeanor of the fourth degree.
- (J) Whoever knowingly violates division (B) or (C) of section 3737.91 of the Revised Code is guilty of a misdemeanor of the second degree.

History: 137 v H 590 (Eff 7-1-79); 138 v S 18 (Eff 7-1-79); 141 v S 61 (Eff 5-30-86); 141 v H 552 (Eff 9-17-86); 141 v H 428 (Eff 12-23-86); 142 v H 171 (Eff 7-1-87); 143 v H 421 (Eff 7-11-89); 146 v S 2. Eff 7-1-96; 151 v H 422, § 1, eff. 9-28-06.

**Sec. 3750.13 Fees.**

- (A)
  - (1) Except as provided in division (A)(3) or (4) of this section, the owner or operator of a facility required to annually file an emergency and hazardous chemical inventory form under section 3750.08 of the Revised Code shall submit with the inventory form a filing fee of one hundred fifty dollars. In addition to the filing fee, the owner or operator shall submit with the inventory form the following additional fees for reporting inventories of the individual hazardous chemicals and extremely hazardous substances produced, used, or stored at the facility:
    - (a) Except as provided in division (A)(1)(b) of this section, an additional fee of twenty dollars per hazardous chemical enumerated on the inventory form;
    - (b) An additional fee of one hundred fifty dollars per extremely hazardous substance enumerated on the inventory form. The fee established in division (A)(1)(a) of this section does not apply



to the reporting of the inventory of a hazardous chemical that is also an extremely hazardous substance to which the inventory reporting fee established in division (A)(1)(b) of this section applies.

The total fees required to accompany any inventory form shall not exceed twenty-five hundred dollars.

- (2) An owner or operator of a facility who fails to submit such an inventory form within thirty days after the applicable filing date prescribed in section 3750.08 of the Revised Code shall submit with the inventory form a late filing fee in the amount of ten per cent per year of the total fees due under division (A)(1) or (4) of this section, in addition to the fees due under division (A)(1) or (4) of this section.
- (3) The owner or operator of a facility who, during the preceding year, was required to pay a fee to a municipal corporation pursuant to an ordinance, rule, or requirement that was in effect on the effective date of this section for the reporting or providing of the names or amounts of extremely hazardous substances or hazardous chemicals produced, used, or stored at the facility may claim a credit against the fees due under division (A)(1) or (4) of this section for the fees paid to the municipal corporation pursuant to its reporting requirement. The amount of the credit claimed in any reporting year shall not exceed the amount of the fees due under division (A)(1) or (4) of this section during that reporting year, and no unused portion of the credit shall be carried over to subsequent years. In order to claim a credit under this division, the owner or operator shall submit with the emergency and hazardous chemical inventory form a receipt issued by the municipal corporation or other documentation acceptable to the commission indicating the amount of the fee paid to the municipal corporation and the date on which the fee was paid.
- (4) An owner or operator who is regulated under Chapter 1509. of the Revised Code and who submits information under section 1509.231 of the Revised Code for not more than twenty-five facilities shall submit to the emergency response commission on or before the first day of March a flat fee of fifty dollars if the facilities meet all of the following conditions:
  - (a) The facility exclusively stores crude oil or liquid hydrocarbons or other fluids resulting, obtained, or produced in connection with the production or storage of crude oil or natural gas.
  - (b) The crude oil, liquid hydrocarbons, or other fluids stored at the facility are conveyed directly to it through piping or tubing.
  - (c) The facility is located on the same site as, or on a site adjacent to, the well from which the crude oil, liquid hydrocarbons, or other fluids are produced or obtained.
  - (d) The facility is used for the storage of the crude oil, liquid hydrocarbons, or other fluids prior to their transportation off the premises of the facility for sale, use, or disposal.

An owner or operator who submits information for more than twenty-five facilities that meet all of the conditions prescribed in divisions (A)(4)(a) to (d) of this section shall submit to the commission a base fee of fifty dollars and an additional filing fee of ten dollars for each facility reported in excess of twenty-five, but not exceeding a total fee of nine hundred dollars.

As used in division (A)(4) of this section, "owner or operator" means the person who actually owns or operates any such facility and any other person who controls, is controlled by, or is under common control with the person who actually owns or operates the facility.

- (B) The emergency response commission and the local emergency planning committee of an emergency planning district may establish fees to be paid by persons, other than public officers or employees, obtaining copies of documents or information submitted to the commission or a committee under this chapter. The fees shall be established at a level calculated to defray the costs to the commission or committee for copying the documents or information, but shall not exceed the maximum fees established in rules adopted under division (B)(8) of section 3750.02 of the Revised Code.
- (C) Except as provided in this division and division (B) of this section, and except for fees authorized by section 3737.22 of the Revised Code or rules adopted under sections 3737.82 to 3737.882 of the Revised Code and collected exclusively for either of those purposes, no committee or political subdivision shall levy any fee, tax, excise, or other charge to carry out the purposes of this chapter. A committee may charge the actual costs involved in accessing any computerized data base established by the commission under this chapter or by the United States environmental protection agency under the "Emergency Planning and Community Right-To-Know Act of 1986," 100 Stat. 1729, 42 U.S.C.A. 11001.
- (D) Moneys collected by the commission under this section shall be credited to the emergency planning and community right-to-know fund created in section 3750.14 of the Revised Code.

History: 142 v S 367 (Eff 12-14-88); 142 v S 76 (Eff 12-21-88); 143 v H 421 (Eff 7-11-89); 144 v H 298 (Eff 7-26-91); 149 v H 94. Eff 9-5-2001; 2015 HB 64, § 101.01, eff. Sept. 29, 2015.

**SECTION 2.** That existing sections 3737.01, 3737.02, 3737.87, 3737.88, 3737.90, 3737.99, and 3750.13 of the Revised Code are hereby repealed.

**SECTION 3.** The petroleum underground storage tank release compensation board created in section 3737.90 of the Revised Code as enacted by this act shall not make any disbursements from the petroleum underground storage tank financial assurance fund created in section 3737.91 of the Revised Code as enacted by this act for the payment of claims under section 3737.92 of the Revised Code as enacted by this act until after the board has adopted rules under division (B)(2) of section 3737.90 of the Revised Code to establish priorities for the payment of claims from the fund and for the payment of those claims in installments, when appropriate.

**SECTION 4.** For the year 1989 only, the bureau of underground storage tank regulations in the division of the fire marshal in the department of commerce shall collect the fees assessed under divisions (B) and (F) of section 3737.91 of the Revised Code as enacted by this act that are otherwise required to be collected under those divisions by the petroleum underground storage tank release compensation board created in section 3737.90 of the Revised Code as enacted by this act. The bureau shall deposit all moneys that it collects under this section in the petroleum underground storage tank financial assurance fund created in division (A) of section 3737.91 of the Revised Code as enacted by this act.

**SECTION 5.** All items in this section are hereby appropriated as designated out of moneys in the state treasury to the credit of the General Revenue Fund. For all appropriations made in this act, those in the first column are for fiscal year 1990 and those in the second column are for fiscal year 1991. The appropriations made in this act are in addition to any other appropriations made for the 1989 1991 biennium.

Passed: June 27, 1989

Signed by Governor: July 11, 1989

Effective date: July 11, 1989

Final page