CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: **Petroleum UST Release Compensation Board**

Regulation/Package Title: **Chapter 3737 External Cross-Reference Rule Corrections**

Rule Number(s): **3737-1-04.1, 3737-01-07, 3737-1-19**

Date: **January 15, 2015**

Rule Type:

- ☐ **New**
- ☑ **Amended**
- ☐ **5-Year Review**
- ☐ **Rescinded**

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. **Please briefly describe the draft regulation in plain language.**
   Please include the key provisions of the regulation as well as any proposed amendments.

   The Board proposes to update the cross-references to rule 3737-1-04 that are incorporated into rules 3737-1-04.1, 3737-1-07 and 3737-1-19. These rule citation updates are necessary as a result of the recent replacement of rule 3737-1-04 which became effective January 1, 2015. There are no substantive amendments to the rules.

Rule 3737-1-04.1 Coverage reinstatement.

The Board proposes to amend paragraph (B) of rule 3737-1-04.1 in order to properly cross-reference paragraph (G)(2) of rule 3737-1-04, which establishes the criteria for the denial of a certificate of coverage.

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

The Board proposes to amend paragraph (A)(2) of rule 3737-1-07 in order to properly cross-reference paragraph (E) of rule 3737-1-04, which establishes the criteria for the issuance of a certificate of coverage. The Board further proposes to amend paragraph (A)(9) of the rule in order to maintain consistency with the fire marshal's rule 1301:7-9-13, which requires both a suspected release and a release to be reported.

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

The Board proposes to amend paragraph (A)(2) of rule 3737-1-19 in order to properly cross-reference paragraph (E) of rule 3737-1-04, which establishes the criteria for the issuanc of a certificate of coverage.

Because these rules are being amended and not subject to a five-year review, the focus will be on the impact of the amendments only.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Section 3737.90 of the Revised Code authorizes the Board to adopt, amend and rescind rules.

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?
If yes, please briefly explain the source and substance of the federal requirement.

While chapter 3737. of the Ohio Administrative Code is not a regulation, the Board and the Fund it manages were created to satisfy federal EPA regulations requiring all U.S. petroleum underground storage tank owners to demonstrate $1 million of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases from petroleum underground storage tank systems [40 C.F.R. Part 280, Subpart H].

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not Applicable.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The Fund serves three vitally important public functions. First, the Fund provides an affordable mechanism necessary to fulfill the federal regulation that requires all petroleum underground storage tank owners and operators to demonstrate financial responsibility of $1 million for corrective action costs and compensation to be paid to a third party for bodily injury or property damage resulting from an accidental release of petroleum from their underground storage tank systems. Second, it protects Ohio's businesses and individuals from financial insolvency by reimbursing responsible persons for the costs incurred to investigate and remediate any releases as well as to compensate affected third-parties. Lastly, it serves to protect the welfare of the general public through the protection of Ohio's land and water resources, thereby reducing health risks associated with petroleum releases.

6. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

Success of these rules will be measured by the overall effectiveness and efficiency of the agency's mission of providing financial assistance to Ohio's petroleum underground storage tank owners and operators for taking necessary corrective action and compensating third parties for bodily injury and property damage caused by accidental releases of petroleum from assured underground storage tanks.

Development of the Regulation

7. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**
If applicable, please include the date and medium by which the stakeholders were initially contacted.

On December 16, 2014, agency stakeholders were notified by email that the Petroleum Underground Storage Tank Release Compensation Board would discuss the correction of the cross-references in rules 3737-1-04.1, 3737-1-07 and 3737-1-19. The email and stakeholder distribution list are attached as Attachment A. The notice was also published on the Board's website, posted at the Board's office and sent to Gongwer News Service.

On January 14, 2015, the Board consisting of the Board Chair, Jim Rocco, representing petroleum refiners; Don Bryant, Jr., representing experience in casualty and fire or pollution liability insurance; Scott Fleming and Steve Hightower, representing businesses that own petroleum underground storage tanks; Tom Stephenson, representing petroleum marketers; Cheryl Hilvert, representing local government; Chris Geyer, representing Director Craig Butler, Ohio EPA; Bill Hills, representing Director Andre Porter, Ohio Department of Commerce; and Bob Field, representing Josh Mandel, Treasurer of State met to consider and discuss amendments to the rules.

Board staff and the following stakeholders were also in attendance:

Bill Behrendt, Ohio Petroleum Marketers and Convenience Store Association (OPMCA)
Dan Adams, Cardno ATC
Doug Darrah, Cardno ATC

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

Stakeholders were provided the opportunity to provide comment during the meeting. However, no comments were made.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Not Applicable.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

Not Applicable.

11. Did the Agency specifically consider a performance-based regulation? Please explain. ***Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

Not Applicable.

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

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

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The Board notifies Ohio's petroleum underground storage tank owners and operators and agency stakeholders of its rule filings through a biannual newsletter and its website. In addition, agency correspondence is written to clearly explain the requirements of the Board's rules to the reader. Constituents are encouraged to contact the Board's office to discuss any questions or concerns regarding the Board's rules with trained agency personnel.

<u>Adverse Impact to Business</u>

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

b. **Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**

c. **Quantify the expected adverse impact from the regulation.**
The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.

The rules adopted by the Board apply to all of Ohio's past and present petroleum tank owners and operators. Currently, there are approximately 2,750 private owners of 19,000 underground storage tanks; an additional 1,650 tanks are owned and operated by public entities.

Rule 3737-1-04.1

a. Rule 3737-1-04.1 only impacts tank owners and operators who have not obtained a certificate of coverage for a given underground storage tank for two or more consecutive fiscal years.

b. In order to comply with rule 3737-1-04.1, any responsible person subject to the rule is required to submit an affidavit certifying that there has been no release or suspected release from the subject underground storage tank required to be reported to the fire marshal or that any known release is in compliance with the corrective action requirements of rule 1301:7-9-13. The tank owner must also provide documentation demonstrating compliance with the fire marshal's rules for the operation and maintenance of petroleum underground storage tanks. Such documentation may include, but is not limited to, copies of release detection records, the results of tank and line tightness tests, the results of corrosion protection tests and out-of-service permits.

c. If a responsible person is subject to the requirements of rule 3737-1-04.1, a single-page affidavit is required to be signed and notarized in order to comply with the certification requirement of the rule. If the responsible person is operating the tank system in compliance with the fire marshal's rules, the records required to comply with the rule should be readily available to the responsible person and can be faxed, emailed or mailed to the Board's Office. Owners who are not in compliance with the fire marshal's rules may need to work with the fire marshal's office to bring the tank system into compliance before the documentation necessary to comply with the rule can be provided.

Rule 3737-1-07

a. Rule 3737-1-07 impacts only responsible persons who are seeking eligibility to claim corrective action costs for reimbursement from the Fund.

b. In order to comply with the rule, the rule requires information to be provided to the director within one year from the date the suspected release or release, whichever is first, was required to be reported to the fire marshal.

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

Rule 3737-1-19

a. Rule 3737-1-19 only impacts a responsible person when a third party files an action against the responsible person to recover costs related to bodily injury or property damage suffered as a result of a petroleum release from an assured underground storage tank.

b. The rule requires the responsible person to submit a Third-Party Claim Eligibility Application in order to receive a determination of eligibility to file claims under the Fund for costs associated with bodily injury or property damages a third-party experiences as a result of an accidental release of petroleum from the responsible person's underground storage tanks. The application must be submitted to the Board within 30 days from the date a responsible person receives any of the following: service of a third-party complaint against the responsible person; receipt of a third-party demand for settlement; or notice of representation of a third party in a lawsuit against the responsible person. It requires administrative time and minimal costs in order to provide the information required in the application.

c. The Third-Party Claim Eligibility Application required by the rule is five pages in length and can be completed by the responsible person or at the responsible person's option, may be outsourced to an environmental consultant or attorney. In addition, a copy of the complaint, demand and/or notice of representation as well as any other available documents supporting the third-party's claim must be provided with the application.

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

The Board members, industry representatives, constituent stakeholders and agency staff recognize that these rules could potentially adversely impact the business community, specifically Ohio's tank owners and operators. However, the rules are necessary to implement sections 3737.90, 3737.91 and 3737.92 of the Revised Code, and they are essential tools that ensure the long-term financial health and continued success of the Fund. Any potential adverse impacts that result from these rules are offset by the benefit to Ohio's tank owner community as a whole.

Rule 3737-1-04.1

Where a certificate of coverage has not been issued for a given petroleum underground storage tank for two or more consecutive prior fiscal years, rule 3737-1-04.1 requires the responsible person to submit documentation demonstrating compliance with the fire marshal's rules for the operation and maintenance of the subject underground storage tank before a certificate may be issued. This rule provides a responsible person with notice of non-assurability with the Fund before the responsible person experiences a release and upon application for eligibility pursuant to rule 3737-1-07, is denied eligibility to claim under the Fund. By verifying the responsible persons compliance with the fire marshal's rules prior to the discovery of a release, the responsible person is provided with advance notice and afforded the opportunity to correct any issues of non-compliance. The rule has been very successful in assisting Ohio's owners and operators with getting into compliance with the rules governing the operation of their underground storage tanks and in ensuring the responsible person is in compliance with those rules at the time a release is discovered.

Rule 3737-1-07

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

Rule 3737-1-19

Rule 3737-1-19 requires the responsible person to file a Third-Party Claim Eligibility application in order to receive a determination of eligibility to file claims under the Fund for compensation to be paid to a third-party for bodily injury or property damage resulting from an accidental release of petroleum. The rule ensures that only a responsible person who is in compliance with applicable state law and who holds a certificate of coverage with the Fund is able to file for and receive monies from the Fund.

No significant changes are being proposed to the rules in this rule package, and an increased cost to the business community to comply with the rules if they are adopted is not anticipated.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

In Ohio, as in many other states, the only mechanism available to petroleum underground storage tank owners and operators to demonstrate $1 million of financial responsibility for taking corrective actions and compensating third parties as required by both federal and state law is the financial assurance fund.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

There are no administrative fines or civil penalties associated with these rules.

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

The Board's staff is available during customer service hours to answer questions tank owners and operators may have concerning the Board's rules. In addition, information is published on the Board's website and presented in its biannual newsletter.

Contact Information:

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Jonathan Maneval

From: Petro Information Email Account
Sent: Tuesday, December 16, 2014 10:26 AM
To: Petro Information Email Account
Subject: Petroleum UST Release Compensation Board Meeting Notice

MEETING NOTICE

Finance Committee Meeting

There will be a Finance Committee meeting on Wednesday, January 14, 2015 at 9:00 a.m. in the conference room in the Board's office. The committee will discuss the Fund's five-year financial projections and future deductible amounts. The result of these discussions may cause the committee to draft amendments to the following rule:

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

Board Meeting – Rules Discussion

The next Petroleum UST Release Compensation Board meeting will be held on Wednesday, January 14, 2015 at 10:00 a.m. During this meeting, the Board will discuss updating the cross-references to rule 3737-1-04 that are included in rules 3737-1-04.1, 3737-1-07 and 3737-1-19, and the amount of the transfer fee. The result of these discussions may cause the Board to draft and approve amendments to the following rules:

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

3737-1-04.1 Coverage reinstatement.

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

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

In accordance with the requirements of Executive Order 2011-01K and Chapter 107 of the Ohio Revised Code, all interested parties are invited to attend these meetings, and all parties in attendance at that time will have the opportunity to provide comment.

All meetings will be held in the conference room in the Board's office:

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Attachment A

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Attachment A

3737-1-04.1 **Coverage reinstatement.**

(A) Where the board has not issued a valid certificate of coverage to a responsible person for a given underground storage tank, for the prior two or more consecutive fiscal years, the responsible person shall:

(1) Comply with the requirements of rule 3737-1-04 of the Administrative Code; and

(2) Certify that, prior to payment, there has been no suspected release or release required to be reported to the fire marshal from the underground storage tank system for which coverage is being sought, or any known release is in compliance with the requirements of rule 1301:7-9-13 of the Administrative Code.

(B) The director shall verify the responsible person is in compliance with applicable rules for petroleum underground storage tank systems adopted by the fire marshal under section 3737.88 of the Revised Code for each tank for which a valid certificate of coverage has not been issued for the prior two or more consecutive fiscal years. Where the director determines that the responsible person is not in compliance with the fire marshal's rules for the underground storage tank system for which coverage is being sought, the certificate of coverage shall be denied in accordance with paragraph ~~(E)(4)~~(G)(2) of rule 3737-1-04 of the Administrative Code.

(C) Nothing in any part of this rule shall be interpreted to allow retroactive coverage for suspected releases or releases required to be reported to the fire marshal prior to the effective date of a valid certificate of coverage.

(D) The rights, limitations, responsibilities, and requirements of rule 3737-1-04 of the Administrative Code in acquiring and maintaining a valid certificate of coverage apply to any certificate of coverage sought and obtained under this rule.

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

(A) As a prerequisite to determining fund payment of or reimbursement for corrective action costs for an accidental release of petroleum, the director of the fund shall issue a determination of eligibility for payment of or reimbursement for such costs where all of the following conditions are established:

(1) Receipt of an application for eligibility, from a responsible person, within one year from the date the suspected release or release, whichever is first, was required to be reported to the fire marshal;

(2) At the time of the suspected release or release, whichever is first, a responsible person possessed a valid certificate of coverage, issued pursuant to rule 3737-1-18 of the Administrative Code and the validity of which has been maintained pursuant to ~~paragraph (E)(1)~~paragraph (E) of rule 3737-1-04 of the Administrative Code, for the petroleum underground storage tank system from which the release occurred;

(3) 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;

(4) 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;

(5) One of the following applies:

(a) At the time the suspected release or release, whichever is first, was required to be reported to the fire marshal, 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;

(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.

(6) 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;

(7) 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 occurred;

(8) 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;

(9) The responsible person has met the petroleum suspected release and release reporting requirements set forth in rule 1301:7-9-13 of the Administrative Code; and

(10) At the time of the suspected release or release, whichever is first, 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.

(B) Where an eligibility application is incomplete, the director or the director's designee may make a written request for additional information. The responsible person shall supply the additional information within sixty days from the date of the request. If the responsible person fails to respond within sixty days from the date of the request, the director or the director's designee shall make a second request for the information and shall notify the responsible person that failure to respond within thirty days from the date of the second request shall result in the denial of eligibility. If the responsible person fails to provide the additional information within thirty days from the date the second request is sent, eligibility shall be denied.

(C) A responsible person determined eligible pursuant to paragraph (A) of this rule for fund payment or reimbursement shall maintain eligibility to the fund by doing all of the following:

(1) Maintaining all records required to be kept by this chapter;

(2) Paying all fees assessed;

(3) Maintaining compliance with all orders issued pursuant to sections 3737.88 and 3737.882 of the Revised Code; and

(4) Maintaining compliance with the applicable rules for petroleum underground storage tank systems adopted by the fire marshal under section 3737.88 of the Revised Code for the underground storage tank system from which the release occurred.

(D) A responsible person may transfer his rights for reimbursement of eligible costs to another party upon notification and approval of the director. The responsible person is liable for all requirements of this chapter and fund eligibility must be maintained. The transfer of rights does not limit the liabilities of the responsible person. Nothing within this paragraph of this rule shall be deemed to grant standing, to a non responsible person, to bring a claim against the petroleum financial assurance fund.

(E) When the director has reason to believe that a responsible person determined eligible to claim against the financial assurance fund pursuant to paragraph (A) of this rule, has failed to maintain fund eligibility pursuant to paragraph (C) of this rule, the director shall issue a notice of pending fund ineligibility. The responsible person shall have thirty days from the mailing of such notice to either provide evidence of compliance with all fund eligibility requirements or take all necessary steps to correct the non-compliance.

If, after thirty days from the mailing of the notice of pending fund ineligibility, the responsible person fails to resolve the non-compliance, the director shall issue a determination of fund ineligibility immediately nullifying any previously-determined eligibility for disbursement from the financial assurance fund. The director shall provide the fire marshal with a copy of the determination issued pursuant to this paragraph.

(F) A responsible person or the fire marshal may file written objections with the board to the director's determination of fund ineligibility no later than thirty days from the mailing of the determination of fund ineligibility. The board upon receipt of the objections shall appoint a referee to conduct an adjudication hearing on the determination in accordance with section 119.09 of the Revised Code.

(G) Determination of fund eligibility does not constitute an obligation for reimbursement from the fund.

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

(A) As a prerequisite to determining fund payment or reimbursement for compensation paid or to be paid for third-party claims for bodily injury or property damages caused by the accidental release of petroleum resulting in the need for corrective action, the director of the fund shall issue a determination of eligibility where all of the following conditions are established:

(1) Receipt of an application for eligibility, from a responsible person, for third-party bodily injury or third-party property damage caused by an accidental release of petroleum within thirty days from the first of any of the following events: service of a third-party complaint against a responsible person, the submission of a third-party demand for settlement, or notice of representation of a third party in a lawsuit against a responsible person. Where a third-party eligibility application is incomplete, the director or the director's designee may make a written request for additional information. The responsible person shall supply the additional information in writing and within sixty days from the date of the request. If the responsible person fails to make a written response within sixty days from the date of the request, the director or the director's designee shall make a second request for the information and shall notify the responsible person that failure to respond within thirty days from the date of the second request shall result in an eligibility denial. If the responsible person fails to make a written response within thirty days from the date the second request is sent, eligibility shall be denied;

(2) At the time of the suspected release or release, whichever is first, a responsible person possessed a valid certificate of coverage, issued pursuant to rule 3737-1-18 of the Administrative Code and the validity of which has been maintained pursuant to ~~paragraph (E)(1)~~paragraph (E) of rule 3737-1-04 of the Administrative Code, for the petroleum underground storage tank system from which the release occurred;

(3) One of the following applies:

(a) At the time the suspected release or release, whichever is first, was required to be reported to the fire marshal, 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;

(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.

(4) 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;

(5) 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 occurred;

(6) 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;

(7) The responsible person has met the petroleum suspected release and release reporting requirements set forth in rule 1301:7-9-13 of the Administrative Code;

(8) At the time of the suspected release or release, whichever is first, 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; and

(9) The responsible person has been determined eligible for payment of or reimbursement for eligible corrective action costs pursuant to rule 3737-1-07 of the Administrative Code.

(B) A responsible person determined eligible pursuant to paragraph (A) of this rule for fund payment or reimbursement shall maintain eligibility to the fund by doing all of the following:

(1) Maintaining all records required to be kept by this chapter;

(2) Paying all fees assessed;

(3) Maintaining compliance with all orders issued pursuant to sections 3737.88 and 3737.882 of the Revised Code; and

(4) Maintaining compliance with applicable rules for petroleum underground storage tank systems adopted by the fire marshal under section 3737.88 of the Revised Code for the underground storage tank system from which the release occurred.

(C) When the director has reason to believe that a responsible person determined eligible to claim against the financial assurance fund pursuant to paragraph (A) of this rule has failed to maintain fund eligibility pursuant to paragraph (B) of this rule, the director shall issue a notice of pending fund ineligibility. The responsible person shall have thirty days from the mailing of such notice to either provide evidence of compliance with all fund eligibility requirements or take all necessary steps to correct the non-compliance.

If, after thirty days from the mailing of the notice of pending fund ineligibility, the responsible person fails to resolve the non-compliance, the director shall issue a determination of fund ineligibility immediately nullifying any previously determined eligibility for disbursement from the financial assurance fund. The director shall provide the fire marshal with a copy of the determination issued pursuant to this paragraph.

(D) A responsible person or the fire marshal may file written objections with the board to the director's determination of fund ineligibility no later than thirty days from the mailing of the determination of fund ineligibility. The board upon receipt of the objections shall appoint a referee to conduct an adjudication hearing on the determination in accordance with section 119.09 of the Revised Code.

(E) Determination of fund eligibility does not constitute an obligation for reimbursement from the fund.