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

(A) Effective April 1, 1991, and each year thereafter in which the unobligated balance of the financial assurance fund does not exceed forty-five million dollars on the date of the board's determination of the annual financial assurance fee for the succeeding fiscal year, the board shall assess a fee for 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.

In the event that the unobligated balance of the financial assurance fund exceeds forty-five million dollars on the date of the board's determination of the annual financial assurance fee for the succeeding fiscal year, 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.

(B) The basis for the calculation of the annual fee includes, but is not limited to, the amount needed to meet financial soundness objectives set forth in division (C) of section 3737.91 of the Revised Code.

(C) The director of the fund shall notify each responsible person by May first of each year of the annual fee. In the year in which an annual fee is not assessed, the director of the fund will provide reasonable notification to responsible persons of the non-assessment of fees.

(D) The annual fee is due no later than July first of each year in which an annual fee is imposed. In the event the director determines that a responsible person fails to pay the annual fee by July first of the year in which the fee is imposed, the director of the fund shall notify the responsible person of the non-payment. If the responsible person fails to submit the annual fee within thirty days of the date the notification of non-payment was mailed, the director of the fund shall issue an order directing the responsible person to pay the annual fee and a late fee of no more than one thousand dollars per tank. If the responsible person fails to comply with the order within thirty days after the issuance of the order, the director shall notify the fire marshal of the non-compliance and may request the attorney general to bring an action for appropriate relief. No retroactive coverage shall be extended in situations where responsible persons have initially failed to pay fees but later did so, regardless of whether they received notification by the director of such failure.

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(1) Except as limited by rule 3737-1-04.1 of the Administrative Code, upon receipt of full payment of the annual fee and any past fees owed, upon demonstration of financial responsibility as required by rule 1301:7-9-05 of the Administrative Code, and upon certification that the responsible person is in compliance with applicable rules for petroleum underground storage tanks adopted by the fire marshal under section 3737.88 of the Revised Code, the director shall issue a certificate of coverage. Payment of the annual fee and any past fees owed, certification of compliance with the fire marshal's rules, and demonstration of financial responsibility for the succeeding fiscal year on or before July first will entitle the responsible person to a certificate of coverage in effect for the fiscal year. Payment of the annual fee and any past fees owed, certification of compliance with the fire marshal's rules, and demonstration of financial responsibility for the current fiscal year after July first will result in a certificate of coverage for that fiscal year effective on and after the date the board received full payment due, certification of compliance with the fire marshal's rules, and demonstration of financial responsibility. The failure to do any of the following will result in the non-issuance or revocation of a certificate of coverage:

(a) Pay any annual fee authorized by division (B) of section 3737.91 of the Revised Code or supplemental fee authorized by division (C) of section 3737.91 of the Revised Code;

(b) Demonstrate and maintain financial responsibility as required by rule 1301:7-9-05 of the Administrative Code for the deductible or, when appropriate, the reduced deductible established under rule 3737-1-06 of the Administrative Code;

(c) Certify and maintain 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 certificate of coverage is sought; or

(d) Pay any fee assessed pursuant to this chapter.

(2) Where ownership of an underground storage tank has been transferred and notice has been given to the director in accordance with paragraph (F) of this rule, a new certificate of coverage shall be issued to the new underground storage tank owner for the fiscal year in which the transfer occurred provided that the new owner pays a transfer fee of five hundred dollars per facility, pays all outstanding fees, if any, demonstrates financial responsibility, certifies compliance with the fire marshal's rules, and, if applicable, complies with rule 3737-1-04.1 of the Administrative Code.

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(3) The director shall accept the annual petroleum underground storage tank financial assurance fee required by this rule but shall not issue a certificate of coverage when the criteria of this rule for issuance are not satisfied.

(4) Where a certificate of coverage is to be denied because the criteria of this rule for issuance are not satisfied, the director shall issue a notice of pending denial to the responsible person. The responsible person shall have thirty days from the mailing of the notice to correct the deficiency. If, after thirty days from the mailing of the notice, the responsible person fails to correct the deficiency, the director shall issue a determination of denial.

Once a certificate of coverage has been issued, it may be revoked at any time upon a finding by the director that the criteria of this rule for issuance are not satisfied. Where a certificate of coverage is to be revoked, the director shall issue a notice of pending revocation to the responsible person. The responsible person shall have thirty days from the mailing of the notice to correct the deficiency. If, after thirty days from the mailing of the notice, the responsible person fails to correct the deficiency, the director shall issue a determination of revocation. The director shall provide the fire marshal with a copy of any determination issued pursuant to this rule.

Where the requirements of this rule are not satisfied at the time of a petroleum release, the certificate is null and void for purposes of coverage and the responsible person is not eligible for reimbursement from the fund, regardless of whether the certificate has been revoked.

(F) In the event that a newly installed underground storage tank is placed in service, the responsible person shall immediately notify the director. In the event that an underground storage tank exists for which a certificate of coverage was not issued in the previous fiscal year, due to an omission, intentional or unintentional, by the responsible person, the responsible person shall immediately notify the director. Upon receipt of notice of a newly installed, or existing underground storage tank, required by this paragraph of this rule, the director shall notify the responsible person of the assessment of any applicable fees. No certificate of coverage will be issued until the responsible person has notified the director of any newly installed or any existing underground storage tank for which a certificate of coverage is not currently in place, has paid the required annual fees for the new or existing tank, all outstanding fees, if any, demonstrates financial responsibility, certifies compliance with the fire marshal's rules, and, if applicable, complies with rule 3737-1-04.1 of the Administrative Code.

In the event of a transfer of an underground storage tank for which a certificate of coverage is currently in place, the transferee shall give notice to the director within thirty days of the date of the transfer. If the new responsible person notifies the

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director within thirty days and complies with the requirements set forth in this rule, the certificate of coverage shall be effective as of the date of the transfer of the underground storage tank. If the new responsible person fails to notify the director of the transfer within thirty days or, if no certificate of coverage for the tank is in effect at the time of the transfer, a certificate of coverage will not be effective until the new responsible person notifies the director of the transfer, pays the transfer fee, and all outstanding fees, if any, demonstrates financial responsibility, certifies compliance with the fire marshal's rules, and, if applicable, complies with rule 3737-1-04.1 of the Administrative Code.

The responsible person shall tender the fees assessed no later than thirty days from the date of notification. If the responsible person fails to submit the annual fees within thirty days after the notification was mailed, the director of the fund shall notify the responsible person of the non-payment. If the responsible person fails to submit the annual fee within thirty days after the notification of non-payment was mailed, the director of the fund shall issue an order directing the responsible person to pay the annual fees and a late fee of no more than one thousand dollars per tank. If the responsible person fails to comply with the order within thirty days after the issuance of the order, the director shall notify the fire marshal of the non-compliance and may request the attorney general to bring an action for appropriate relief. Where a responsible person has failed to inform the director, as is required by this rule, the director is not required to notify the responsible person of fees owed.

(G) A responsible person may file with the board written objections to any order or determination of the director issued pursuant to this rule. If the written objection is received by the board within thirty days of the date of mailing of the order or determination, the board shall appoint a referee to conduct an adjudication hearing in accordance with section 119.09 of the Revised Code.

(H) The amount of the annual fee is five hundred dollars per tank.

(I) A responsible person shall maintain with the director a current mailing address at which determinations, notices, and orders may be sent. Any determination or order shall be mailed by certified mail to the responsible person's address on file with the board. If the certified mail is returned unclaimed, the order or determination shall be served upon the responsible person in accordance with section 119.07 of the Revised Code.