

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 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 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 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 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.

(E) 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, as determined by the director, 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. Full payment of the annual fee and any past fees owed, as determined by the director, demonstration of financial responsibility, and certification of compliance with the fire marshal's rules 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. Full payment of the annual fee and any past fees owed, as determined by the director, demonstration of financial responsibility, and certification of compliance with the fire marshal's rules 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, demonstration of financial responsibility, and certification of compliance with the fire marshal's rules.

(F)

(1) In the event an underground storage tank is installed, the responsible person shall immediately notify the director upon introducing a regulated petroleum product into the underground storage tank. 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 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, as required by this paragraph of this rule, the director shall notify the responsible person of the assessment of any applicable fees, including but not limited to, the annual fee for the fiscal year in which a regulated petroleum product was first introduced into the underground storage tank or July 1, 1989, whichever is later, and any subsequent fiscal years. No certificate of coverage will be issued until the responsible person notifies the director of any newly installed or any existing underground storage tank for which a certificate of coverage is not currently in place, pays the fees assessed, 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.

(2) In the event ownership of an underground storage tank is transferred, the new responsible person shall notify the director within thirty days of the date of the transfer. Upon receipt of notice of a transfer of an underground storage tank as required by this paragraph of this rule, the director shall notify the new responsible person of the assessment of any applicable fees, including, but not limited to, any fees outstanding at the time of the transfer of the underground

storage tank, as determined by the director, any annual fees outstanding for the fiscal year in which the transfer occurred and any subsequent fiscal years of ownership, and a transfer fee of five hundred dollars per facility.

- (a) If a certificate of coverage is in effect at the time of the transfer and the new responsible person notifies the director as required by this rule, pays the transfer fee, demonstrates financial responsibility, and certifies compliance with the fire marshal's rules within thirty days of the date the notification of assessment was mailed, the certificate of coverage shall be effective as of the date ownership of the underground storage tank transferred. Where outstanding fees exist at the time of the transfer, the certificate of coverage is null and void for purposes of coverage.
 - (b) If a certificate of coverage is not in effect at the time of the transfer or the new responsible person fails to notify the director of the transfer as required by this rule, no certificate of coverage will be issued until the new responsible person notifies the director of the transfer, pays the fees assessed, 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.
- (3) The responsible person shall pay the fees assessed no later than thirty days from the date the notification of assessment was mailed. If the responsible person fails to submit the annual fees within thirty days of the date the notification of assessment was mailed, the director shall notify the responsible person of the nonpayment. If the responsible person fails to submit the annual fees within thirty days of the date the notification of non-payment was mailed, the director 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 notify the director as required by this rule, the director is not required to notify the responsible person of fees owed.

(G)

- (1) The failure of the responsible person 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;
 - (d) Comply with rule 3737-1-04.1 of the Administrative Code, if applicable;
 - (e) Pay any fee assessed pursuant to this chapter; or
 - (f) Pay any fees determined by the director to be owed.
- (2) 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 notify the fire marshal of any determination issued pursuant to this rule.

Where the requirements of this rule are not satisfied at the time of a release incident, the certificate of coverage 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 of coverage has been revoked.

- (H) 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.

- (I) The amount of the annual fee is three hundred fifty dollars per tank.
- (J) 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.

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under:	119.03
Statutory Authority:	3737.90
Rule Amplifies:	3737.91, 3737.92
Prior Effective Dates:	08/01/1990, 04/25/1991, 05/04/1992, 04/26/1993, 07/01/1994, 07/01/1995, 07/01/1996, 04/01/1997, 04/01/1999, 09/18/1999, 04/01/2000, 04/01/2001, 07/01/2003, 04/01/2004, 04/01/2005, 06/30/2006, 04/01/2008, 11/30/2009, 04/01/2014, 01/01/2015, 04/01/2015, 04/01/2018, 01/01/2019, 07/01/2020, 07/01/2023